

# Exhibit N

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CHARLENE DZIELAK, et al., :  
:  
:  
Plaintiffs, : CIVIL ACTION NO.  
: 2:12-cv-00089-KM-SCM  
vs. :  
:  
:  
WHIRLPOOL CORPORATION, :  
:  
Defendants. :

Videotaped deposition of DR. J. MICHAEL DENNIS, taken by and before Lisa Forlano, CCR, CRR, RMR, at the offices of Bursor & Fisher, P.A., 888 Seventh Avenue, New York, New York, on Tuesday, March 8, 2016, commencing at 9:20 a.m.

Job No. CS 2236907

A P P E A R A N C E S:

BURSOR & FISHER, P.A.

BY: JOSEPH I. MARCHESE, ESQUIRE

888 SEVENTH AVENUE

NEW YORK, NEW YORK 10019

(646) 837-7410

jmarchese@bursor.com

ATTORNEYS FOR PLAINTIFFS

WHEELER TRIGG O'DONNELL LLP

BY: GALEN D. BELLAMY, ESQUIRE

370 SEVENTEENTH STREET

SUITE 4500

DENVER, COLORADO 80202-5647

(303) 244-1800

bellamy@wtotrial.com

ATTORNEYS FOR DEFENDANTS

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1 VIDEO OPERATOR: We're now on the  
2 record at approximately 9:20 a.m. This is the  
3 beginning of File Number 1.

4 My name is Kevin Gallagher,  
5 representing Veritext Corporate Services,  
6 New York.

7 The date today is March 8, 2016. The  
8 deposition is being held at Bursor & Fisher,  
9 located at 888 Seventh Avenue in New York  
10 City, and it is being taken by counsel for the  
11 defendant.

12 The caption of the case is  
13 Charlene Dzielak versus Whirlpool Defendants,  
14 et al., versus Whirlpool Corporation, et al.  
15 The case is filed in the U.S. District Court,  
16 District of New Jersey. The case number is  
17 2:12-cv-00089 (KM) (JBC).

18 The name of the witness is  
19 Dr. J. Michael Dennis.

20 At this time, the attorneys in the room  
21 will identify themselves for the record.

22 MR. BELLAMY: Galen Bellamy for the  
23 Defendants.

24 MR. MARCHESE: Good morning, everyone.  
25 Joseph Marchese of Bursor & Fisher for the

1 Plaintiffs.

2 VIDEO OPERATOR: The court reporter is  
3 Lisa Forlano, also of Veritext Corporate  
4 Services. She will now swear the witness and  
5 we can proceed.

6 DR. J. MICHAEL DENNIS, having been duly  
7 sworn, was examined and testified as follows:

8 BY MR. BELLAMY:

9 Q Good morning, Dr. Dennis.

10 A Good morning.

11 Q What is your understanding of the  
12 allegations in this case?

13 A My understanding is that the Plaintiffs  
14 alleged that the purchasers of the Maytag Centennial  
15 washing machines were harmed or damaged because of a  
16 misleading advertising and particularly the  
17 misleading labeling of those washing machines  
18 containing the Energy Star logo when, in point of  
19 fact, at least according to the federal government,  
20 they should not have had the Energy Star logo  
21 affixed to those washing machines.

22 Q And what time period were the Maytag  
23 Centennial washers manufactured?

24 A The dates of their manufacture, as best  
25 I can recall, were 2009 through -- I can't speak

1     authoritatively to manufacturing dates. I know  
2     there's sales data for the actual transactions for  
3     2009 through 2012.

4             Q           2012?

5             A           I understand there's some sales in  
6     2012. It was starting to -- the sales were trailing  
7     off by 2012. I think most of the transactions were  
8     in the 2009/2010 period and then less in 2011 and  
9     even less in 2012.

10            Q           What did you do to familiarize yourself  
11   with the facts of this case?

12            A           The materials that I listed in my  
13   attachment, list of considered materials, I looked  
14   at those.

15                        So the Second Amended Complaint filed  
16   by the Plaintiffs would be the first document that I  
17   looked at. I also looked at the sales, the retail  
18   sales transaction data made available to me from  
19   several retailers, including Home Depot and others.  
20   I looked at the advertising that was used by Maytag.  
21   I looked at advertising circulars, for instance, to  
22   try to understand how the Energy Star logo was used.  
23   I think my list of considered materials also  
24   includes documents such as the user manual provided  
25   to purchasers and then other documents that I'm

1 failing to remember at the moment but which are  
2 listed in my attachment.

3 Q And you mentioned retail sales  
4 transaction data.

5 Did you look at retail sales  
6 transaction data nationwide, or for some select  
7 states?

8 A I did both.

9 Q And do you understand that there's more  
10 than one model of Maytag Centennial washer that was  
11 sold during the class period?

12 A I do.

13 Q And did you look at the retail sales  
14 price for all of those models?

15 A I believe I did.

16 Q And you calculated an average retail  
17 sales price based on that data?

18 A I did. I calculated an average for the  
19 various sources of data that were provided to me.

20 Q And that average was limited to a  
21 subset of the retailer data?

22 In other words, did you consider all of  
23 the retailer sales data when you created your  
24 average?

25 MR. MARCHESE: Objection to form.



1 THE WITNESS: No, I did not.

2 BY MR. BELLAMY:

3 Q Which retailer sales data did you look  
4 at?

5 A I looked at Home Depot, Lowe's, Fry's,  
6 and also the Sears retail transactions.

7 The reason I answered no to your  
8 previous question was because I isolated the years.  
9 So if the retail transactions included years before  
10 2009, I excluded those and focused on the 2009 and  
11 2010 period.

12 Q So you testified earlier that you  
13 understood sales continued into 2011 and 2012.

14 Did I understand you to say that your  
15 average retail price was based on retail sales in  
16 2009 and 2010 only?

17 A No. I looked at all the data. I  
18 looked at the 2011 and 2012 data as well. I  
19 calculated several averages because there are  
20 several data sets made available to me.

21 Q Okay. The average that you ultimately  
22 used in your survey and that you cite in your  
23 report, is that based on retail sales data for 2009  
24 through 2012?

25 A It's based on that time period. That's

1 correct.

2 Q So you excluded that were prior to  
3 2009, but not any sales thereafter?

4 A That's accurate. However, to be clear,  
5 I looked at the data several different ways. So I  
6 looked at the 2009 and 2010 on its own and looked at  
7 the average for 2009 and 2010 as a grouping. I also  
8 looked at it including 2011.

9 I looked at the Whirlpool transactions  
10 from the Whirlpool data set. That had data going  
11 more recently, going beyond 2010, including 2011 and  
12 2012. In that instance, I looked at all the  
13 retail -- I looked at all the transaction data that  
14 were available in that data set.

15 Q Did you understand I'm asking -- the  
16 question I was asking you was for the average retail  
17 price that you used to calculate the 400-dollar  
18 amount that you included in your survey?

19 A Yes, I understand your question.

20 Q And in calculating that average retail  
21 price, did you combine the retail prices of the  
22 different models of Maytag Centennial washer that  
23 were sold?

24 A No. I looked at them in isolation. So  
25 I looked at the C6 -- if I could use the shorthand

1 for me --

2 Q Sure.

3 A -- the C6 versus the C7 models. I  
4 looked at them separately.

5 Q The 400-dollar average retail price  
6 that you used in your survey, was that based on the  
7 average retail price of the C6, or the C7?

8 A It was based on the C6.

9 Q And do you know how the average retail  
10 price of the C6 and C7 differ, if at all?

11 A As I recall, when I looked at the  
12 averages -- and I'm not going to get the number  
13 exactly right -- but I was observing about a  
14 hundred-dollar difference, where the C7 was about  
15 \$100 more. That's what I can recollect, sitting  
16 here today.

17 Q And why did you choose to focus on the  
18 average retail price of the C6 as opposed to the C7?

19 A My understanding is that the vast  
20 majority of the actual transactions involve sales of  
21 the C6, so I focused on the C6 model for my analysis  
22 and ultimately the use of the 400-dollar average in  
23 my survey.

24 Q Do your opinions in this case apply  
25 equally to the C7 model as they do the C6 model?

1           A           They do.

2           Q           So the 100-dollar retail price  
3 difference that you identified is not material to  
4 your opinions in this case?

5                       (Brief recess.)

6                       VIDEO OPERATOR: After a power outage,  
7 we're now back on the record at approximately  
8 9:30 a.m.

9 BY MR. BELLAMY:

10          Q          Before we went off the record, I asked  
11 you -- and I will do my best to recreate the  
12 question -- well, let's back up a step.

13                      You testified, as I understood, that  
14 the average retail sales price of the C7 was  
15 approximately \$100 more than the C6?

16          A          As best I can recall.

17          Q          Okay. Do you know why the average  
18 retail price of the C7 was more than the C6?

19          A          I understood the C7 had an additional  
20 feature involving the use of glass. I believe it  
21 was on the top of the washing machine. Otherwise, I  
22 understand the materials and technology were very  
23 similar to the C6.

24          Q          So the only difference that you're  
25 aware of is the glass lid on the C7?

1           A           That is the difference I'm aware of.

2           Q           And I believe you testified that you  
3           didn't think the hundred-dollar difference in  
4           average retail price between the C6 and C7 was  
5           material to your opinion about the price premium in  
6           this case?

7                       MR. GUZZARDO: Can I hear that back?

8                       (At which time the following question  
9           was read back by the reporter:

10                      "QUESTION: And I believe you testified  
11           that you didn't think the hundred-dollar  
12           difference in average retail price between the  
13           C6 and C7 was material to your opinion about  
14           the price premium in this case?")

15                      MR. MARCHESE: Objection.

16                      THE WITNESS: I'm not sure exactly what  
17           you mean by "material." I can tell you that I  
18           did consider that price differential in  
19           designing the survey, so I did consider all  
20           the sales transaction data made available to  
21           me for the C6 and the C7 model.

22                      My expert opinion is that my actual  
23           discount numbers -- this is the price premium  
24           paid estimate in my survey -- applies to both  
25           the C6 and the C7 models.

1 BY MR. BELLAMY:

2 Q Do you know why the at-issue Maytag  
3 Centennial washers allegedly did not comply with  
4 Energy Star?

5 A I missed the early part of your  
6 question, sir.

7 Q Do you know why the at-issue Maytag  
8 centennial washers allegedly did not comply with  
9 Energy Star?

10 A From an energy perspective, or I should  
11 say an engineering perspective, I do not understand  
12 or have information on why it did not comply.

13 Q Do you have -- are you aware of any  
14 facts related to why they were disqualified from the  
15 Energy Star program?

16 A The facts that I'm aware of involve at  
17 least two series of tests that the federal  
18 government conducted on the washing machines at  
19 issue in this case. I believe the Department of  
20 Energy conducted two independent tests of those  
21 washing machines.

22 Q And do you understand whether those  
23 tests revealed that the washing machines used too  
24 much energy or too much water?

25 A My understanding is that both tests

1 were run involving using too much energy and too  
2 much water.

3 My understanding is that the washing  
4 machines failed the test on both measures.

5 Q Is it your understanding that the  
6 Maytag Centennial washers should not have displayed  
7 the Energy Star label because they used too much  
8 energy and too much water?

9 A Are you asking for my expert opinion at  
10 this point?

11 Q I'm actually asking what you understand  
12 the allegations in this case to be.

13 A My understanding of the allegations in  
14 the case is that Plaintiffs allege that the  
15 Energy Star logo as affixed to the Maytag Centennial  
16 washing machine was misleading because the  
17 Energy Star logo did not merit being on these  
18 machines according to the U.S. Federal Government  
19 tests.

20 Q And did you understand that they did  
21 not merit being on the machine because they used  
22 more energy than the Energy Star program would  
23 allow, for example?

24 A As an example, energy. Another example  
25 is, of course, the water conservation.

1           Q       Are you aware of any other reason why  
2       the Energy Star label that was affixed to the  
3       machines is alleged to have been misleading?

4           A       My understanding is that there are two  
5       issues that led to it being misleading. The first  
6       one involves energy use, and the second one is water  
7       use. Those are the two that I'm aware of.

8           Q       Do you know how much energy a  
9       top-loading washer was allowed to use in 2009 and  
10      2010 and still be compliant with Energy Star?

11                  MR. MARCHESE: Objection, lacks  
12      foundation.

13                  THE WITNESS: My understanding, if  
14      memory serves, is that the Energy  
15      Star-compliant washing machine needs to use at  
16      least 37 percent less energy than the minimum  
17      standards set for washing machines, and that  
18      is the extent of my knowledge on that. I  
19      think I recall reading that in one of the  
20      materials in my list of considered materials.

21      BY MR. BELLAMY:

22           Q       And you anticipated my next question.  
23                    Do you recall specifically where that  
24      37 percent figure came from?

25           A       I do not at this point in time.



1           Q           And you referenced a "minimum  
2           standard."

3                       Is that a federal minimum standard for  
4           energy use for washing machines?

5           A           Yes, that is my understanding.

6           Q           And do you know what that minimum  
7           standard was in 2009 and 2010?

8           A           No, I do not have knowledge of that.

9           Q           Do you know by how much the Maytag  
10          Centennial washers are alleged to have not complied  
11          with Energy Star?

12          A           I do not have information on that.

13          Q           Do you know how much more energy they  
14          use than allowed by the Energy Star program in 2009  
15          and 2010?

16          A           My understanding is that the units  
17          failed the tests; but by how much, I do not have  
18          information.

19          Q           And the same question with respect to  
20          how much more water they're alleged to have used  
21          than allowed by Energy Star?

22          A           My answer is the same. I have  
23          knowledge that it failed the tests with respect to  
24          water use; but by how much, I do not have that  
25          information.

1           Q       And a similar question for -- in terms  
2 of percentage.

3                   Do you understand by what percent they  
4 missed the Energy Star minimum standards?

5           A       I believe you're referring, for  
6 instance, to the 37 percent-type number that I  
7 mentioned earlier.

8           Q       Actually, it was a poorly-worded  
9 question, so I'll rephrase.

10                   I understand that you wouldn't know how  
11 much energy in terms of kilowatt hours or water in  
12 terms of gallons that the washers used beyond what  
13 Energy Star allow; is that right?

14           A       That's correct.

15           Q       And now I'm asking the same question in  
16 terms of percentage.

17                   What percentage more energy do the  
18 washers use than Energy Star would allow?

19           A       My understanding of the way the Energy  
20 Star program is that the way the Energy Star program  
21 operates is that it's not material whether a washing  
22 machine fails by a certain percentage by simply  
23 failing on its own terms, whether it's 1 percent or  
24 100 percent. That's enough to disqualify that  
25 washing machine. So I did not actually research by

1     how much or by what percentage the machines failed  
2     these tests.

3             Q         So you don't know by how much, what  
4     percentage the machines are alleged to have failed  
5     the Energy Star test?

6             A         That's correct, and I explained why I  
7     did not research that.

8             Q         Do you know how much money a consumer  
9     could save per year by purchasing an Energy Star  
10    top-loading washer in 2009 as compared to a  
11    top-loading washer that complied with federal  
12    minimum standards?

13            A         No. I would give the same answer.  
14    That was not germane to my scope of my assignment,  
15    to design a survey measuring the price premium, so I  
16    did not research that.

17            Q         Do you know how much less water an  
18    Energy Star washer used to wash clothes compared to  
19    a washer that met federal minimum standards?

20            A         My answer is the same as for energy and  
21    for water.

22            Q         And the answer is you don't know?

23            A         I did not research that for reasons  
24    I've specified. It was not material to my  
25    assignment.

1           Q           Do you know how much it costs on an  
2           annual basis in water and energy costs to operate a  
3           Maytag Centennial washer?

4                   MR. MARCHESE: Objection to form.

5                   THE WITNESS: I believe at some point,  
6           I would have seen the energy guide that had  
7           that information or an estimate of that  
8           information, but I do not recall that number  
9           right now.

10          BY MR. BELLAMY:

11          Q           What is the energy guide that you  
12          referred to?

13          A           The energy guide is, as I understand  
14          it, required to be affixed to the washing machines  
15          and other appliances that are part of the  
16          Energy Star program. And it includes the Energy  
17          Star logo itself; it includes a statement of the  
18          average annual yearly costs, I believe, energy costs  
19          of operating the appliance; and I believe it also  
20          compares it to other products in that space.

21          Q           And just to be clear, is it your  
22          understanding that the energy guide label is  
23          required to be affixed only on Energy Star  
24          appliances?

25          A           That is my understanding.

1           Q           How many other models of top-loading  
2 washers were available in the market in 2009 and  
3 2010?

4           A           How many other models besides Maytags?

5           Q           Correct.

6           A           I know that there were products made  
7 available through GE, Frigidaire. I believe  
8 Hotpoint had models out there at the same time. LG,  
9 Samsung. I cannot specify how many additional  
10 models there were, but there were a number of  
11 manufacturers in this space.

12          Q           And specifically, you are talking about  
13 top-loading washers that were available in 2009?

14          A           I am.

15          Q           And did you consider materials relevant  
16 to those other top-loading washers?

17          A           I believe I did.

18          Q           And what materials were those?

19          A           I examined, in particular, the sales  
20 transaction data for the retail sales of the Maytag  
21 Centennial washing machines. That is relevant  
22 because of the actual market transactions showing  
23 what consumers were willing to pay and what  
24 retailers were willing to price these products.

25                   And because it's a competitive

1 marketplace, my assumption is that those retail  
2 transactions and the prices that these units are  
3 being sold for reflects the competitive landscape of  
4 what other similarly featured products are also  
5 selling for in the marketplace.

6 Q And I just want to make sure. I may  
7 have misunderstood you.

8 When I asked you about whether you  
9 considered information about the other top-loading  
10 washers, was your response that you considered the  
11 retail sales data for the Maytag Centennial washers  
12 in particular?

13 A I did.

14 Q Did you consider retail sales data for  
15 the other top-loading washers whose manufacturers or  
16 brands you just listed?

17 MR. MARCHESE: Objection, asked and  
18 answered.

19 THE WITNESS: I did not look at it  
20 specifically. I looked at it in light of what  
21 the price positioning was for Maytag itself  
22 and pricing the Maytag Centennial washing  
23 machines in a competitive marketplace.

24 BY MR. BELLAMY:

25 Q And I understand you looked at the

1 retail price of the Maytag Centennial washers, but  
2 I'm still confused whether you considered the retail  
3 sales price of the other top-loading washing  
4 machines that are not Maytag Centennial washers.

5 A I did look at other pricing. I looked  
6 at pricing of other washing machines that are  
7 available in the marketplace. As part of my design  
8 of the survey questionnaire, I thought it was  
9 important to look at actual market prices.

10 I did not look at actual transaction  
11 data. The transaction data for retail sales are  
12 listed in my list of considered materials; but I did  
13 look at advertising, as I saw it, of other products  
14 that were top-loading machines.

15 Q So what specifically did you rely on to  
16 identify pricing of other non-Centennial washer  
17 top-loading washers?

18 A The question is about which materials I  
19 relied on?

20 Q Correct.

21 A I did look at the Home Depot website  
22 and other retailer websites.

23 Q And did you list those websites in your  
24 appendix of reviewed materials?

25 A I would have to look at it. I believe

1 I list the Homedepot.com website on my list.

2 Q Did you take any screen captures of the  
3 information you saw on those websites?

4 A I may have. I don't remember right  
5 now.

6 Q Did you produce those documents to us?

7 MR. MARCHESE: Objection. He just says  
8 he doesn't know if they exist.

9 THE WITNESS: I didn't produce  
10 anything. I'm not sure if I have such  
11 documents.

12 BY MR. BELLAMY:

13 Q Is there any reason you wouldn't have  
14 provided those documents?

15 A No reason.

16 Q Were they -- were the websites you  
17 considered, did they list prices of other  
18 top-loading washers available in the market at the  
19 time you looked at them?

20 A Could you repeat the question, please?

21 Q You said, for example, that you recall  
22 going to Homedepot.com.

23 A Correct.

24 Q And while you were on Homedepot.com,  
25 you looked at advertised pricing for other kinds of



1 top-loaders?

2 A I did.

3 Q And were those advertised prices on  
4 those top-loaders that were available for sale at  
5 the time you looked at the machine -- at the time  
6 you looked at the website, sir?

7 A So, to be clear, I was looking at  
8 current websites. I was not looking at archived  
9 websites. I was looking at the products available  
10 for sale at the time that I visited the  
11 Homedepot.com website.

12 Q Did you consider, whether it's a  
13 website or otherwise, any materials or data showing  
14 what prices other kinds of top-loading washers were  
15 available for in 2009?

16 A Again, in this case, I relied on the  
17 actual retail sales transaction data I had from  
18 Whirlpool and the major retailers for the Maytag  
19 Centennial products.

20 Q I'm not sure that answers my question  
21 directly. I understand you looked at the Maytag  
22 Centennial pricing. We've covered that. I'm asking  
23 a different question.

24 Did you look at the -- any pricing data  
25 for models other than the Maytag Centennial washers

1 that were available for sale in 2009?

2 A I did not specifically research the  
3 other models for 2009, 2010. I did rely on the  
4 pricing data made available to me for the Maytag  
5 Centennial washing machines, which I believe  
6 provided a reliable source of information for me to  
7 have a sense of what market pricing was in 2009 and  
8 2010.

9 Q Did you consider the features that were  
10 available on other top-loading washers other than  
11 the Maytag Centennial washer that were sold in 2009  
12 and 2010?

13 A With respect to 2009 and 2010, I did  
14 not do the analysis you just mentioned. In looking  
15 at the realtime websites, I did look at the  
16 top-loading features and other features of  
17 comparable products to the Maytag Centennial washing  
18 machine.

19 Q When you say "realtime websites," what  
20 are you referring to?

21 A At the time that I searched on  
22 Homedepot.com, the information that was available to  
23 me.

24 Q So you considered the features that are  
25 available in 2015 or 201t, whenever visited the

1 site, on other top-loading washers sold at that  
2 time?

3 A In 2015, correct.

4 Q When, approximately, in 2015 was this?

5 A I believe the timeline on this project  
6 for me was October was the month where I designed  
7 the survey questionnaire. That's October 2015. So  
8 it would be sometime in that time frame.

9 Q And you mentioned Homedepot.com, what  
10 can you tell me about the website that you visited?

11 MR. MARCHESE: Objection, form.

12 THE WITNESS: It is the Homedepot.com  
13 website, so you have the ability to apply  
14 filters and sort the available washing  
15 machines by top-loading versus front-loading,  
16 for instance. I recall using that filter just  
17 to make my search more efficient for washing  
18 machines relevant to this case.

19 BY MR. BELLAMY:

20 Q So you used the filter to sort  
21 top-loading washing machines available on  
22 Homedepot.com?

23 A I did.

24 Q And you said, I believe, "washing  
25 machines relevant to this case."

1                   How would you define that?

2           A           I think the important part is the  
3   top-loading feature.

4                   Also, I looked at the cubic footage of  
5   the capacity. I was particularly interested in  
6   washing machines that either had the 4.0 cubic foot  
7   capacity or something close to it that would be  
8   comparable. Those are two of the features that  
9   stand out for me today.

10          Q          So if I understand your testimony, and  
11   please correct me if I'm wrong, you sorted for  
12   top-loading.

13                   Did you further sort for capacity?

14          A          I did.

15          Q          Did you sort for any other feature that  
16   you can remember?

17          A          Thanks for asking the question because  
18   I did sort on Energy Star. I recall that. There  
19   was a filter there for being able to sort on  
20   Energy Star-compliant.

21                   So I was interested in looking at all  
22   the products that fit the first description of the  
23   4.0 cubic foot that had the top-loading feature and  
24   then also furthermore by the Energy Star label.

25          Q          And your recollection is that you were

1 able to sort top-loading washers specifically by  
2 capacity and then again by Energy Star?

3 A As I sit here today, I'm confident that  
4 the Home Depot website had that capacity where you  
5 could apply those filters.

6 Q Do you recall how many top-loading,  
7 4-cubic-foot-capacity washers came up from your  
8 search of the Home Depot website?

9 A I don't remember how many, but I  
10 remember I had to broaden my search in order to get  
11 a reasonable number of washing machines.

12 I saw some that were in the 3.8 to  
13 4.2 cubic foot range. So I do recall broadening my  
14 search slightly so that I could have a larger number  
15 of products to examine.

16 Q And by "broadening," do you mean you  
17 expanded the size of the cubic-feet capacity that  
18 would be responsive to your request?

19 A That is correct.

20 Q And you said you were hoping to get "a  
21 reasonable number."

22 "Reasonable" for what purpose?

23 A This was all done in the way of  
24 background research for me to design a reliable  
25 questionnaire, so I did not have a set number

1 a priori for washing machine units I wanted to look  
2 at.

3 I was doing, if you would, a market  
4 scan of the washing machines that are available so  
5 that I could become educated on competitor products,  
6 the different features, so ultimately I could design  
7 a survey questionnaire that would be well understood  
8 by the respondents and reliable.

9 Q What different features did you  
10 identify from your review of competitive washing  
11 machines?

12 A I think my questionnaire reflects this.  
13 There's at least one screen in my survey  
14 questionnaire where I list various features of  
15 washing machines. And as memory serves -- and my  
16 questionnaire is the ultimate document that's  
17 produced from this exercise -- I looked at  
18 appearance, style; obviously, top-loading versus  
19 front-loading. There's also cycles, standard cycles  
20 available. And those are just examples.

21 Q And why specifically were you  
22 considering these features in the competitive  
23 washers that are available in the marketplace in  
24 2015?

25 A It was important for me to be able to

1 understand washing machines from all the  
2 manufacturers so that I could describe them well and  
3 describe the features accurately and reliably in my  
4 survey.

5 Q For the top-loading washing machines  
6 that had the cubic foot capacity that you were  
7 focused on, what was the price range of those  
8 washing machines?

9 A Among the competitor models?

10 Q Correct.

11 A As I sit here today, I don't remember  
12 the price range.

13 Q Do you remember if it was more or less  
14 than \$400?

15 MR. MARCHESE: Objection.

16 THE WITNESS: I don't remember the  
17 price range or if it was at \$400 or more.

18 BY MR. BELLAMY:

19 Q Did you not consider -- let me back up.  
20 Let me strike that.

21 Was price one of the features of  
22 competitive models that you thought was relevant to  
23 constructing your survey?

24 A Yes, and that's why I relied on the  
25 retail transaction data I mentioned before. That

1 was made available to me by counsel, and this had  
2 the retail transaction data for the Maytag units.

3 Q Did you think the price of competitive  
4 models of top-loading washers was a relevant feature  
5 for designing your survey?

6 MR. MARCHESE: Objection, asked and  
7 answered.

8 THE WITNESS: Was a relevant feature?  
9 BY MR. BELLAMY:

10 Q Correct.

11 A Yes, I previously testified I thought  
12 that's a relevant feature, and that's why I  
13 conducted the research I did on this point.

14 Q So you identified as examples of  
15 features of competitive washers that you thought  
16 were important to your survey, style, top-loading  
17 configuration, and cycles.

18 And just to be clear, I'm asking: Is  
19 price also one of those features you considered  
20 relevant to designing your survey?

21 A It was.

22 Q But you don't remember as you sit here  
23 today anything about the prices of the competitive  
24 washers?

25 A Again, on the record, having spoken



1 this morning thus far, I did not look at the 2009,  
2 2010 prices on the Home Depot website. I only  
3 looked at the current information available on the  
4 Home Depot website for these products. So I did not  
5 look at the actual data from 2009, 2010 for the  
6 competitor products, but I did rely on what I  
7 considered to be very reliable data on the Maytag  
8 retail transactions, which gives me insight to what  
9 the marketplace was tolerating for a price point for  
10 these models.

11 MR. BELLAMY: I'm going to move to  
12 strike that answer as nonresponsive.

13 BY MR. BELLAMY:

14 Q I skipped the instructions part of this  
15 deposition because I know you've been deposed quite  
16 a few times.

17 A Uh-huh.

18 Q In addition to being required to answer  
19 my question truthfully, you are required to answer  
20 my question.

21 We're going to have some dispute about  
22 whether that's the case or not, so I need to build a  
23 record that shows when I don't think you've answered  
24 my question.

25 The question I asked you was whether

1 you considered the price of the competitive washers  
2 you looked at on Homedepot.com to be a relevant  
3 feature in the same way you thought style,  
4 top-loading configuration, and cycles were relevant  
5 features.

6 A I understand your question. Thanks for  
7 repeating it.

8 I would say that my emphasis in  
9 examining the Home Depot website was less about  
10 collecting any price information about competitors.  
11 I felt that I already had very good price  
12 information to use from the sources I've mentioned  
13 already for the 2009, 2010 period.

14 So my emphasis on the Homedepot.com  
15 website when I visited that was to get a sense of  
16 the other features, nonprice features that I should  
17 be putting in my survey so that respondents would  
18 have a good experience in taking -- in answering my  
19 survey questions.

20 Q You said "nonprice features." So  
21 you -- when you looked at the Home Depot website,  
22 you were not interested in the price at which the  
23 competitive models were selling for?

24 A I would not say "not interested,"  
25 excuse the double negatives. I was interested. I

1 just -- my emphasis was on learning about the other  
2 features.

3 In designing a contingent valuation  
4 survey, it's important to have a credible  
5 information provision to the respondents so that  
6 they will recognize the product that's being  
7 presented to them.

8 So visiting a Homedepot.com website was  
9 useful for me so that I could describe these  
10 products fairly and based on objective information  
11 about how people think about these top-loading  
12 washing machines.

13 Q But you didn't -- in creating the  
14 credible presentation, I believe was the phrase you  
15 used, you didn't limit your analysis to just the  
16 features that were on the at-issue Maytag Centennial  
17 washers; you also considered competitive washers  
18 that were available for sale?

19 A I did consider these competitor washing  
20 machines.

21 Q But you did not consider the cost of  
22 the competitive washing machines in creating the  
23 credible presentation to survey respondents?

24 MR. MARCHESE: Objection, misstates  
25 testimony.

1 THE WITNESS: I think a more accurate  
2 description of what I did is that I relied on  
3 the Maytag retail transaction data that I  
4 mentioned before for establishing the  
5 400-dollar price point I put in my survey.  
6 That was the data that I relied on for that  
7 exercise. I did not rely on my inspection of  
8 the Home Depot website for that purpose.

9 BY MR. BELLAMY:

10 Q What was the least expensive  
11 top-loading washer available for sale in 2009?

12 A I think I answered already that I did  
13 not look at the 2009 and 2010 pricing specifically  
14 for the competitor products. I relied on the Maytag  
15 data to give me a sense of what the marketplace was  
16 willing to pay.

17 Q So is it fair to say that you also  
18 don't know what the most expensive top-loading  
19 washer was available on the market in 2009?

20 A Well, I know for the C7, if I'm  
21 remembering correctly, the one with the glass lid  
22 for Maytag, that had a price point that was at least  
23 \$100 more as I understand it. So that is one data  
24 point I took into account.

25 Q Are there any other data points about

1 the high end of the price range for top-loading  
2 washers available for sale in 2009?

3 A Could I trouble you to repeat that  
4 question?

5 Q Sure.

6 I asked what was the highest price  
7 point was for top-loading washers in 2009, and you  
8 mentioned that the C7 had sold for \$100 more.

9 Are you aware of any other price points  
10 at the high end of the top-loading market in 2009?

11 A As I sit here today, I'm not aware of  
12 higher price points. I would assume that there  
13 would be.

14 I would say that in examining, for  
15 instance, Dr. Sukumar's report, he used a wide range  
16 of price points in his survey. I think he had a  
17 price point in his survey up to \$700, if memory  
18 serves. So I would assume, for instance, that that  
19 price point in his survey would be established  
20 through a market review that would be based on what  
21 prices were available for top-loading machines in  
22 2009 and 2010.

23 Q Did you rely on Dr. Sukumar's report in  
24 formulating your survey questions?

25 A No, I did not.

1           Q           Do you know whether the 400-dollar  
2           average retail price you used in your survey would  
3           have been an inexpensive top-loading washer in 2009,  
4           an average cost, or an expensive top-loading washer  
5           in 2009?

6                   MR. MARCHESE: Objection to form.

7                   THE WITNESS: I did not have direct  
8           information that point. I would assume  
9           that -- or my belief is that the retail  
10          transaction data that was made available to me  
11          was an accurate measurement of the competitive  
12          landscape in 2009 and 2010 for washing  
13          machines with features comparable to the  
14          Maytag Centennial washing machine.

15       BY MR. BELLAMY:

16           Q           And just so we're clear, the  
17           information that you're referring to, the retail  
18           transaction data, was limited to Maytag Centennial  
19           top-loading washers, correct?

20                   MR. MARCHESE: Objection to form.

21                   THE WITNESS: The data -- also to be  
22          clear, all the retail sales transaction data  
23          made available to me was for the Maytag  
24          Centennial washing machines.

1 BY MR. BELLAMY:

2 Q And so based on the average retail  
3 price of the Maytag Centennial washers, you  
4 concluded that -- you concluded what about  
5 non-Maytag Centennial top-loading washer prices?

6 MR. MARCHESE: Objection to form.

7 THE WITNESS: My expert opinion is that  
8 the Maytag price point -- and the price point  
9 is established through actual historic retail  
10 transactions -- reflects Maytag's own analysis  
11 of what other manufacturers are using for a  
12 price point for their washing machines.

13 So my reliance on that data from  
14 Maytag, one of the data sources, obviously, I  
15 use is from Whirlpool directly for  
16 transactions. The other was retail sales  
17 transactions from the major retailers I  
18 mentioned earlier.

19 My expert opinion is that these price  
20 points reflect a number of factors, including  
21 Maytag's own analysis and the retailers'  
22 analysis of what other competitor products are  
23 priced.

24 BY MR. BELLAMY:

25 Q You mentioned other factors that could

1 influence the price, and you identified Maytag's own  
2 analysis of what competitors are pricing their  
3 top-loaders at.

4 Is that one of the factors?

5 A It is.

6 Q You also identified the retailers'  
7 analysis of what their competitors are pricing  
8 top-loading washers at.

9 Is that a factor?

10 A I did. I said that.

11 Q What other factors affecting price can  
12 you identify?

13 A There are other supply-side-type  
14 factors that come into play for a business such as  
15 Maytag in establishing a price point for its  
16 products.

17 For instance, there's research and  
18 development costs that Maytag would incur in  
19 developing these Maytag Centennial washing machines.  
20 They would have cost of goods, the actual materials  
21 that are used in the manufacturing of the Maytag  
22 Centennial washing machines.

23 In addition, there's logistics and  
24 distribution of the washing machines for  
25 transportation, warehousing, for the actual products



1 as shipped to the retailers.

2 In addition, there are other kinds of  
3 cost for marketing, advertising, and any executive  
4 costs for strategy and business development.

5 So those strike me as the main  
6 categories for describing the supply-side factors in  
7 addition to what I've talked about already about  
8 examining competitor pricing for those products.

9 Q Are you aware of whether there were any  
10 other Maytag brand top-loading washers in 2009?

11 A As I sit here today, I'm not aware of  
12 other Maytag units as you've described. I was not  
13 asked to do a survey on other Maytag units, but to  
14 estimate the price premium paid with respect to the  
15 Energy Star logo for the Maytag Centennial machines.

16 (Declaration and Expert Report of  
17 J. Michael Dennis, Ph.D. was marked Dennis-1  
18 for identification.)

19 BY MR. BELLAMY:

20 Q Dr. Dennis, I'm handing you what's been  
21 marked as Exhibit 1 for your deposition.

22 Take a moment to flip through that  
23 document and tell me what it is.

24 A This is the expert report that I wrote  
25 in this matter. It doesn't include the attachments,

1 but it does include the declaration expert report  
2 where my opinions are stated.

3 Q If you could turn to page 8 of your  
4 report, please.

5 I'm sorry, Paragraph 8. That's on  
6 page 3.

7 The first sentence of your report says,  
8 "I was asked to design, conduct, and report the  
9 results of a contingent valuation survey to measure  
10 the price premium, if any, attributable to the  
11 Energy Star label on Maytag Centennial washing  
12 machines." And then you list the models.

13 Did I read that correctly?

14 A You did.

15 Q Sir, were you asked specifically to  
16 conduct a contingent valuation survey?

17 A I believe I was asked to design a study  
18 that would measure the price premium attributable to  
19 the Energy Star logo on the Maytag washing machines.

20 I believe that it was my opinion  
21 instantly that it should be a contingent valuation  
22 survey. I believe counsel also had the same opinion  
23 when I was initially given this assignment.

24 So as I sit here today, I cannot  
25 remember who first had the thought that it should be

1 a contingent valuation survey. I think it was  
2 mutually shared.

3 Q And so I'm just a little hung up on the  
4 language, and I want to make sure I understand.

5 The first sentence of the scope of your  
6 declaration says you were asked to design, conduct,  
7 and report the results of a contingent valuation  
8 survey. It doesn't say you were asked to measure  
9 the price premium, and you decided to conduct a  
10 contingent valuation survey.

11 And so my question is: Were you asked  
12 to conduct a contingent valuation survey, or not?

13 A As I sit here today, I think that's  
14 accurate, that I was asked to do a contingent  
15 valuation survey; that the methodology I've used  
16 before has been shown to be reliable. So I'll stand  
17 by what I've said here in my report that I was asked  
18 to do a contingent valuation survey.

19 Q So you were not asked to identify a  
20 price premium generally and given discretion to  
21 choose the method; you were asked specifically to  
22 conduct a contingent valuation survey?

23 MR. MARCHESE: Objection to form.

24 THE WITNESS: Again, I think it was  
25 mutually shared; that contingent valuation is

1 an approach where I have expertise; that it is  
2 a logical expectation that I would design a  
3 contingent valuation survey to measure the  
4 price premium.

5 My recollection is that counsel did ask  
6 me to design a contingent valuation survey. I  
7 have a history of doing contingent valuation  
8 surveys; so therefore, that's what I did in  
9 this case.

10 BY MR. BELLAMY:

11 Q And you were specifically asked to  
12 conduct a contingent valuation to measure the price  
13 premium?

14 A If any attributable, correct.

15 Q And what does "price premium" mean?

16 A "Price premium" is a concept that is  
17 looking at the difference in value for consumers  
18 between, in this case, a washing machine with and  
19 without the Energy Star label.

20 Q And what does price in the phrase  
21 "price premium" specifically refer to?

22 A The price paid by the actual consumers  
23 for the product. The price premium analysis  
24 involves isolating the value or that part of the  
25 price that the consumers place on this particular

1 attribute of the Energy Star label.

2 Q So to make sure I understood, when you  
3 referred to "value," you said that part of the  
4 actual price that a consumer paid?

5 A That is correct.

6 Q Do you believe that a contingent  
7 valuation method is the only method available to  
8 measure the price premium in this case?

9 A No.

10 Q What other methods are available?

11 A I think the conjoint or discrete choice  
12 methodology as it's sometimes called is also an  
13 alternative approach.

14 Q Are there any others?

15 A Those are the two most reliable in my  
16 opinion.

17 Q Are you qualified to conduct a conjoint  
18 or a discrete choice analysis yourself?

19 A I am qualified to conduct conjoint  
20 surveys.

21 Q Did you consider using a conjoint  
22 analysis instead of a contingent valuation in this  
23 case?

24 A No. I considered the contingent  
25 valuation methodology for my purposes.

1           Q           Is there any reason why you didn't  
2 consider a conjoint analysis for your purposes?

3           A           I had the opinion that contingent  
4 valuation methodology is a reliable tool,  
5 particularly in this situation where the attribute  
6 in question, the Energy Star label, has a binary  
7 character, a pass/fail-type character with respect  
8 to whether it should or should not be on the  
9 product. I think in those circumstances, contingent  
10 valuation is a particularly strong approach.

11                   Having said that, very similar logic  
12 and justification could be made for conducting a  
13 conjoint survey with a binary attribute such as the  
14 Energy Star label.

15           Q           You used the word "reliable" in  
16 describing the contingent valuation method.

17                   What do you mean by "reliable"?

18           A           I mean "reliable" in two senses of the  
19 word. The first is what I understand to be the  
20 legal definition of "reliable"; that the survey  
21 results and the estimates are trustworthy, that  
22 they're accurate, that they can be relied upon for  
23 drawing conclusions of facts.

24                   The other definition that I used for  
25 "reliable" is the one that is more common to my

1 field of survey research, which is that the survey  
2 is reproducible; that the survey is reliable in the  
3 sense that it could be replicated by other  
4 researchers if they were to follow my protocol.

5 Q Focusing on the first of the two  
6 sentences of "reliable," you said the survey results  
7 would be an accurate estimate; is that right?

8 Did I understand that?

9 A I believe I may have said "reliable and  
10 accurate," if I remember correctly.

11 Q And what do you mean by "accurate"  
12 there?

13 A Accurate in the sense of what survey  
14 researchers call "valid," meaning that the survey  
15 provides an accurate rendering or measurement of the  
16 population.

17 Q Can you explain more what that means?

18 A The distinction is between population  
19 and sample. The population consists of the universe  
20 of households or persons for which you are  
21 attempting to estimate some characteristics; in this  
22 case, the price premium paid by these purchasers for  
23 this product that is attributable to the Energy Star  
24 label.

25 The term "sample" is different from

1 "population." You draw samples from the population  
2 in order to make accurate projections or estimates  
3 of population characteristics.

4 Q So does "accurate" in the sense you're  
5 using it here mean that the price premium identified  
6 is the actual price paid by consumers?

7 A No.

8 Q Well, let's back up.

9 What are the characteristics of the  
10 population that you were testing for in the  
11 contingent value survey?

12 A Instead of the word "testing," I would  
13 simply insert the word "measuring" instead.

14 Q Okay.

15 A I was attempting to measure the price  
16 premium paid by class members as a result of the  
17 mislabeled washing machines.

18 So, in short, what was the price  
19 premium paid by the purchasers that could be  
20 attributable or is a result of the fact that these  
21 Maytag Centennial washing machines had affixed to  
22 them an Energy Star label?

23 Q And was the price premium that you  
24 identified through your contingent valuation survey  
25 accurate in the sense you defined before?



1 MR. MARCHESE: Objection to form.

2 THE WITNESS: Yes. And to make sure  
3 the record is clear, I'm referring to accuracy  
4 with respect to the survey producing valid  
5 survey estimates that are an accurate  
6 measurement of the population characteristic  
7 which is clear from my Paragraph 8 is the  
8 measurement of the price premium paid  
9 attributable to the Energy Star logo on these  
10 washing machines.

11 BY MR. BELLAMY:

12 Q Is the price premium your survey  
13 identified, does it directly correlate to actual  
14 prices paid by consumers for these washing machines?

15 A The answer to your question is that  
16 instead of projecting to the actual price paid by  
17 the respondents, it is an accurate result for the  
18 percentage of the price paid; that part of the price  
19 paid that is attributable to the fact that the  
20 Energy Star label was affixed to these washing  
21 machines.

22 Q So the price premium you identified for  
23 the washers that were the subject of your survey  
24 should be understood in terms of a percentage of the  
25 price paid at retail?

1           A           I'm going to ask you to repeat the  
2 question, please.

3           Q           Sure.

4                    I believe the price premium you  
5 identified was in the neighborhood of \$205.

6                    Does that sound right to you?

7           A           No.

8           Q           Okay. Do you recall what the price  
9 premium was you identified?

10          A           As a percentage, it was 48.5 percent.

11          Q           48.5 percent of what?

12          A           Of the price paid by the actual  
13 purchaser.

14          Q           So is it your expert opinion that that  
15 48.5 percent is the price premium actually paid by  
16 consumers in this case?

17          A           48.5 percent multiplied by the price  
18 paid. And that is the accurate description, in my  
19 opinion, of what I've provided the economist in this  
20 case for the damages calculation.

21          Q           So whatever dollar amount a class  
22 member paid for their Maytag Centennial washer, it  
23 is your opinion that 48.5 percent of that price is  
24 attributable to the price premium for the  
25 Energy Star logo?

1           A           Your statement/question, in my view,  
2       needs to be modified slightly, if I could --

3           Q           Please.

4           A           -- to take into account that my survey  
5       is not a measurement of individual or person-level  
6       discounts. It is a measurement in the aggregate for  
7       class members in terms of the average discount  
8       needed; or put differently, the average price  
9       premium paid as a share of the price that they  
10      actually paid.

11                    The clarification that I'm attempting  
12      to put on the record is that, and I thought I sensed  
13      or understood your question to possibly have an  
14      individual-level component or person-level  
15      component. If not, then my answer is not necessary  
16      here, but I wanted to be clear that my survey is  
17      intended to be an analysis in the aggregate or the  
18      average across the class.

19                    MR. MARCHESE: Can we take a bathroom  
20      break? We've been going for about an hour.

21                    MR. BELLAMY: Two more questions, and  
22      then --

23                    MR. MARCHESE: Okay.

24                    MR. BELLAMY: -- actually, no. This is  
25      a good time.

1 VIDEO OPERATOR: We're now going off  
2 the record at approximately 10:23 a.m.

3 End of Video 1.

4 (Brief recess.)

5 VIDEO OPERATOR: This is the beginning  
6 of File 3.

7 We are going back on the record at  
8 approximately 10:37 a.m.

9 BY MR. BELLAMY:

10 Q Just a couple of quick follow-up  
11 points.

12 We discussed when you visited  
13 Homedepot.com.

14 Can you remember any other websites you  
15 visited when doing the research into competitive  
16 machines?

17 A No, I can't remember any other ones.

18 Q You referred to Energy Star as a  
19 "binary choice."

20 What is your basis for that statement?

21 A I think I said "binary attribute," if  
22 I'm not mistaken.

23 Q Well, why don't we start with what do  
24 you mean by "binary attribute"?

25 A By "binary attribute," I'm referring to

1 the dichotomous nature of the Energy Star label. It  
2 is either on the products and affixed to the  
3 products, or it's not affixed to the products.

4 Q You mentioned before that your  
5 understanding was that an Energy Star washer in 2009  
6 had to be something like 37 percent more efficient,  
7 energy efficient, than the federal minimum standards  
8 would allow?

9 A That's what I recall, yes.

10 Q Okay. So if a washer was 36 percent  
11 more efficient than Energy Star would allow, would  
12 you agree that a consumer got most of the energy  
13 efficiency implied by Energy Star compliance?

14 MR. MARCHESE: Objection to form, lacks  
15 foundation.

16 THE WITNESS: I don't have an opinion  
17 on that. I think that's outside the scope of  
18 my assignment in this project.

19 BY MR. BELLAMY:

20 Q It doesn't matter whether you think  
21 it's outside the scope.

22 Would you agree that a consumer who  
23 purchased a washing machine that was 36 percent more  
24 efficient than the federal minimum standards got  
25 most of the benefits of energy efficiency implied by

1 Energy Star compliance?

2 MR. MARCHESE: Objection to form, lacks  
3 foundation.

4 THE WITNESS: Again, I don't have an  
5 opinion on that. If they bought the product  
6 as a result of the Energy Star label on there  
7 and it did not deserve to be on there, then,  
8 in my opinion, they paid a price premium for  
9 having that Energy Star label there.

10 BY MR. BELLAMY:

11 Q And I'm not asking you about price  
12 premium. I'm asking you about the energy efficiency  
13 implied by Energy Star.

14 But let's back up.

15 Do you agree that the Energy Star label  
16 impliedly represents that a labeled washer will use  
17 less energy than a nonlabeled washer?

18 A That is my understanding.

19 Q And your understanding is that in order  
20 to properly bear the label, the washing machine had  
21 to use 37 percent less energy than federal minimum  
22 standards?

23 A And also the water part, too. There's  
24 energy in water.

25 Q We're focused on energy right now. So

1 would you agree, then, that a consumer who purchased  
2 a washer that delivered 36 percent more energy  
3 efficiency got most of the energy efficiency implied  
4 by the Energy Star label?

5 A Again, I'm not an expert on that. I  
6 would also mention that there are other benefits of  
7 the Energy Star label as I understand them from the  
8 market research that's been done.

9 Some people have a nonmonetary benefit  
10 from purchasing an Energy Star-labeled product,  
11 knowing that there is an environmental benefit, less  
12 energy being used, less water being used.

13 My understanding is that there is a  
14 nonmonetary benefit that some consumers feel that  
15 they receive by buying a product with the  
16 Energy Star label.

17 Q So my question, though, was: Focusing  
18 on the energy efficiency, a consumer who purchased a  
19 washing machine that was 36 percent more energy  
20 efficient than federal minimum standards, did they  
21 receive most of the energy efficiency benefits  
22 implied by the Energy Star label?

23 MR. MARCHESE: Objection to form.

24 THE WITNESS: Again, I don't have an  
25 opinion on that.

1 BY MR. BELLAMY:

2 Q Why not?

3 A I'm not an expert in how consumers --  
4 or, for that matter, the engineering aspects of  
5 washing machines and energy use. I don't have the  
6 technical background to evaluate that statement.

7 Q Do you require a technical background  
8 to tell the difference between 36 percent and  
9 37 percent?

10 MR. MARCHESE: Objection,  
11 argumentative.

12 THE WITNESS: No. I think that would  
13 just require basic knowledge of statistics.

14 BY MR. BELLAMY:

15 Q Well, do you have a basic knowledge of  
16 statistics?

17 A I do.

18 Q All right. Is 36 percent almost as  
19 much as 37 percent?

20 MR. MARCHESE: Objection to form.

21 THE WITNESS: As a matter of fact, of  
22 course, those two numbers are very similar.

23 BY MR. BELLAMY:

24 Q So if a consumer bought a washing  
25 machine that was 36 percent more than federal



1 minimum standards as opposed to 37 percent, would  
2 they have received most of the benefits of energy  
3 efficiency implied by the Energy Star label?

4 MR. MARCHESE: Objection to form.

5 THE WITNESS: Again, there's other  
6 kinds of benefits that the purchasers might be  
7 receiving here.

8 BY MR. BELLAMY:

9 Q I didn't ask you about other kinds of  
10 benefits.

11 MR. MARCHESE: Is there a question  
12 pending?

13 MR. BELLAMY: Yes. I'm waiting for an  
14 answer to my question.

15 THE WITNESS: What's the question?

16 MR. BELLAMY: Can you read back my  
17 question, please?

18 (At which time the following question  
19 was read back by the reporter:

20 "QUESTION: So if a consumer bought a  
21 washing machine that was 36 percent more than  
22 federal minimum standards as opposed to  
23 37 percent, would they have received most of  
24 the benefits of energy efficiency implied by  
25 the Energy Star label?")

1 MR. MARCHESE: Objection to form.

2 THE WITNESS: My opinion is that  
3 clearly, 36 percent and 37 percent are  
4 statistically close to each other. There's  
5 only a 1 percentage point difference. So  
6 there was only -- there is that difference  
7 that you just pointed out in terms of energy  
8 efficiency differences between 36 and  
9 37 percent, so I think your question answers  
10 itself.

11 BY MR. BELLAMY:

12 Q What is "contingent valuation"?

13 A "Contingent valuation" is a research  
14 tool that uses surveys to measure how much value  
15 people place on nonmarket goods. That's essentially  
16 what it is.

17 Q What do you mean by "nonmarket goods"?

18 A "Nonmarket goods" meaning goods that  
19 are not available in the common marketplace.

20 Q Sorry, another definitional question:  
21 What do you mean by "common marketplace"?

22 A The marketplace available for buying  
23 and selling on the marketplace.

24 Q And what does the word "contingent" in  
25 "contingent valuation" refer to?

1           A           It's in reference to the valuation  
2           that's essentially the value that consumers or  
3           citizens or whatever the population that's being  
4           studied place on a product contingent on its  
5           availability; contingent that the product is  
6           actually made available to them.

7           Q           For products that are sold in a common  
8           marketplace, is contingent valuation a reliable  
9           method for identifying a price premium associated  
10          with those products?

11          A           The question is -- requires a more  
12          complicated answer than may seem necessary for your  
13          question.

14          Q           Well, let me see if I can break it  
15          down.

16                      You mentioned that contingent valuation  
17          is used to measure the value placed on nonmarket  
18          goods; is that right?

19          A           That is correct.

20          Q           Is contingent valuation also used to  
21          measure value placed on market goods?

22          A           I believe there are -- I believe there  
23          is literature where contingent valuation research is  
24          used on market goods with the explicit purpose of  
25          testing whether existing products should be changed

1 or have features added or subtracted in order to  
2 estimate whether there's going to be a market for  
3 that good.

4 Q For goods that are market goods that  
5 are available in the common marketplace, what is the  
6 best indication of their value?

7 MR. MARCHESE: Objection to form.

8 THE WITNESS: It's a very broad  
9 question.

10 BY MR. BELLAMY:

11 Q What is the best indication of their  
12 price?

13 A The price would be, for example, retail  
14 sales transaction data that I looked at in this  
15 case. So looking at actual transaction data is an  
16 indicator of how much value people place on actual  
17 products in the market.

18 Q For market goods that are available in  
19 the marketplace, is the retail price the most  
20 reliable indicator of the value people place on that  
21 product?

22 MR. MARCHESE: Objection to form, lacks  
23 foundation.

24 THE WITNESS: The problem with the  
25 question, if I could put it that way, is that

1 one has to be very careful in defining what  
2 product exactly is on the marketplace.

3 For products that are actually on the  
4 marketplace -- and this is where I need to be  
5 clear -- a Maytag Centennial washing machine  
6 without the Energy Star logo or label was not  
7 available in the marketplace in that 2009,  
8 2010 time frame, so that is a product that was  
9 not on the marketplace.

10 The product that was in the marketplace  
11 was the Maytag Centennial washing machine with  
12 the Energy Star label on it.

13 I wanted to make sure that my answer to  
14 your question is in the right context because  
15 when it comes to examining how much people  
16 value products that are actually on the  
17 marketplace, it needs to be understood in  
18 light of what information they have about  
19 those products.

20 And in this case, the consumers did not  
21 have information that the Energy Star label  
22 should not have been on those products.

23 MR. BELLAMY: I'm going to move to  
24 strike as unresponsive.  
25

1 BY MR. BELLAMY:

2 Q My question was about products that are  
3 available in the marketplace and whether or not the  
4 retail price is the best indication of value for  
5 products that are actually available in the  
6 marketplace.

7 A I was attempting to be responsive to  
8 your question. I did not want to be misunderstood;  
9 that my answer of yes, that is a reliable way to  
10 measure consumers' valuation of products, I do not  
11 want that to be misunderstood to be a statement that  
12 I agree that's a reliable methodology for estimating  
13 the value that consumers place on these washing  
14 machines without the Energy Star label.

15 Q Did I ask you about these washers in my  
16 question?

17 A You asked about products that are on  
18 the market.

19 Q Correct.

20 A And I am simply --

21 Q Providing information that helps --

22 A I'm carving out that my answer is not  
23 responsive to a product without the Energy Star  
24 logo.

25 Q I think we've established your view on

1     that point.

2                     For products that are available in the  
3     marketplace, is price the best indicator of their  
4     value?

5                     MR. MARCHESE:   Objection, lacks  
6     foundation.

7                     THE WITNESS:   I am not an economist.  
8     It's not something that I am an expert in, but  
9     I would believe that most economists would  
10    agree with that statement, and I would agree  
11    with that statement as a noneconomist.

12    BY MR. BELLAMY:

13                    Q       And as somebody who is an expert in  
14    contingent valuation, which I would assume that's  
15    your expertise --

16                    A       Yes.

17                    Q       -- would you agree that for products  
18    that are available in the marketplace, retail price  
19    is a more accurate indicator of value than a  
20    contingent valuation survey?

21                    A       Again, you have to be careful and  
22    specify exactly what the product is that we're  
23    talking about that applies to this statement.

24                    Q       I said "products that are actually  
25    available in the marketplace," and I understand that

1     you believe these products were not.

2                 So take it as a given that it is a  
3     product actually available in the marketplace.

4                 Do you agree that the market price is a  
5     better indication of value than a contingent  
6     valuation survey?

7                 MR. MARCHESE: Objection to form.

8                 THE WITNESS: In my expert opinion, if  
9     a product is available in the marketplace,  
10    that means that there's going to be actual  
11    market transaction data for that product,  
12    which means that the contingent valuation  
13    approach, in my expert opinion, is not  
14    applicable.

15                So, in short, the contingent valuation  
16    approach would not be used in the circumstance  
17    you're describing where there's an existing  
18    product in the marketplace.

19                Now, if there's consideration for  
20    changing that product, for adding new features  
21    or changing some of the existing features of  
22    that product, that product is clearly in the  
23    marketplace. However, the designer or the  
24    business may be interested in collecting data  
25    on what consumers might want in changes in



1           that product, in which case a contingent  
2           valuation approach could be used.

3       BY MR. BELLAMY:

4           Q       And in that circumstance, the  
5           contingency would be the feature that they may want  
6           to add or change about the product because that  
7           feature doesn't yet exist in the marketplace; is  
8           that right?

9                   MR. MARCHESE: Objection to form.

10                  THE WITNESS: That's correct.

11       BY MR. BELLAMY:

12           Q       You mentioned earlier this morning  
13           that -- in connection with our discussion about  
14           whether you were retained to do a contingent  
15           valuation analysis or whether or not you decided  
16           that a contingent valuation was the most appropriate  
17           method here, I believe you said that you almost  
18           instantly recognized that contingent valuation was  
19           the method you preferred.

20                   Did I understand that correctly?

21           A       I came to my own independent conclusion  
22           that a contingent valuation approach would be a  
23           reliable methodology for this project.

24           Q       And did you reach that conclusion right  
25           away?

1 MR. MARCHESE: Objection to form.

2 THE WITNESS: I don't recall how much  
3 time I spent on it, but when the issues -- and  
4 I read the Complaint, it made clear sense to  
5 me that contingent valuation would be a  
6 reliable tool for this project.

7 BY MR. BELLAMY:

8 Q Did you base your -- did you reach the  
9 decision to implement a contingent valuation survey  
10 only after reading the Complaint?

11 A I don't remember the precise moment  
12 when I made that decision.

13 Q What data had you reviewed, if any, in  
14 addition to the Complaint when you decided that a  
15 contingent valuation would be the appropriate method  
16 to use here?

17 A Again, don't remember when I made the  
18 decision to use contingent valuation. I know that  
19 it was early on; very early in the process for me.  
20 It is my expertise. The issues were described to  
21 me, and I read in the Complaint about the binary  
22 nature of the Energy Star program and the label. I  
23 saw value in using the contingent valuation approach  
24 very early in the process. When it happened and  
25 what steps, I don't exactly remember.

1           Q           I'm not asking when. To be clear, I'm  
2 asking what information you based that decision on.

3                   You identified the Complaint as one  
4 possible source of information.

5                   Was there any other source of  
6 information that you relied on in reaching the  
7 conclusion that contingent valuation was the  
8 appropriate method here?

9           A           I think I would have looked at, and I'm  
10 reasonably confident that I looked at, the Energy  
11 Star label itself and looked at how the label was  
12 affixed to the Maytag Centennial washing machine  
13 itself to determine that the label was actually  
14 used.

15                   So there's some primary background  
16 information that I would have looked at to  
17 understand the issues in this case, using documents  
18 in addition to the Complaint.

19           Q           Did you take any steps to determine  
20 whether or not a non-Energy Star version of the  
21 Maytag Centennial washer existed in the marketplace  
22 in 2009?

23           A           I think we addressed this a little bit  
24 earlier. I was asked to look at the price premium  
25 paid, if any, attributable to the Energy Star label

1 on specific washing machines.

2 I did not see it in my scope to look at  
3 Maytag's other products, so I did not research that.

4 Q Well, if a version of the Maytag  
5 Centennial washer that was not Energy Star existed,  
6 would contingent valuation still be the right  
7 approach?

8 MR. MARCHESE: Can I just hear that  
9 back? I'm sorry.

10 (At which time the following question  
11 was read back by the reporter:

12 "QUESTION: Well, if a version of the  
13 Maytag Centennial washer that was not Energy  
14 Star existed, would contingent valuation still  
15 be the right approach?")

16 MR. MARCHESE: Objection, form.

17 THE WITNESS: I would need to think  
18 about it and see all the evidence that's  
19 presented. My opinion right now is that the  
20 CV or contingent valuation approach would  
21 still be a reliable tool.

22 BY MR. BELLAMY:

23 Q Why?

24 A Because the contingent valuation  
25 approach has a powerful ability to isolate the value

1 that consumers and purchasers place on particular  
2 attributes, and that is exactly what the scope of my  
3 assignment was in this case.

4 Q Would it be possible to test the  
5 reliability of the conclusions you reached from the  
6 contingent valuation survey?

7 A With respect to what you mean by  
8 "reliability" in your question, reliability could be  
9 established by conducting the survey a second time  
10 to assure that the results for the first survey are  
11 reproducible in the second survey.

12 That's how I understood you to mean the  
13 word "reliable" in your question.

14 Q I believe you gave me another  
15 definition of "reliable" earlier. I may be mistaken  
16 about that.

17 A I articulated two interpretations of  
18 the word.

19 Q Okay. So I think you just answered,  
20 and consistent with the second definition, that it  
21 was reproducible.

22 Is there a way to test whether the  
23 conclusions reached from the contingent valuation  
24 survey are reliable in the other sense of the word?

25 A In the other sense, we're talking about

1 accuracy and rejectability of the results to the  
2 population of interest.

3 The answer is yes, there are various  
4 alternative ways to establish reliability of the  
5 contingent valuation survey as presently defined in  
6 your question.

7 Q Can identify some of those?

8 A One would be to compare the results of  
9 the contingent valuation survey to alternative  
10 survey-based approaches or other approaches  
11 potentially available to the researcher to see if  
12 the discount values or the price premium paid  
13 estimates from the contingent valuation survey are  
14 consistent with alternative methodologies. That is  
15 one approach.

16 Another approach is to examine the  
17 contingent valuation survey itself to identify  
18 whether the survey itself is well-designed, whether  
19 the protocol for gaining cooperation and conducting  
20 the data collection has integrity, so there's  
21 process-based measures of examining how the  
22 contingent valuation survey was executed.

23 Thirdly, I'll mention there are  
24 statistical tests that can be conducted to examine  
25 the results from the contingent valuation survey

1 from a quality control perspective to test and  
2 assure that the contingent valuation survey results  
3 are not subject error; error resulting from  
4 survey-related sources.

5 Q The first of the three measures you  
6 mentioned was to compare the results of the  
7 contingent valuation to other survey-based  
8 approaches; is that right?

9 A That's a possibility, yes.

10 Q Are there other sources external to the  
11 survey itself that you could consult to evaluate the  
12 reliability of your contingent valuation survey?

13 MR. MARCHESE: Objection, form.

14 THE WITNESS: External to survey-based  
15 approaches generally?

16 BY MR. BELLAMY:

17 Q Sure.

18 MR. MARCHESE: Objection to form.

19 THE WITNESS: I'll leave it to  
20 economists to explore alternative  
21 nonsurvey-based alternatives available.

22 BY MR. BELLAMY:

23 Q What about if they were actual market  
24 prices for comparable non-Energy Star washers?

25 MR. MARCHESE: Objection, lacks

1 foundation.

2 THE WITNESS: That's outside the scope  
3 of my expertise as well as my assignment to  
4 have an opinion on that.

5 BY MR. BELLAMY:

6 Q If there were comparable non-Energy  
7 Star versions of these washers available, would it  
8 be within the scope of your expertise to determine  
9 whether contingent valuation was an appropriate  
10 method or not?

11 A With respect to deciding whether  
12 contingent valuation methodology is the appropriate  
13 tool or one of several appropriate tools for this  
14 study, in my opinion, it was not necessary to have  
15 information about whether there are other products  
16 comparable to the Maytag Centennial products without  
17 the Energy Star logo.

18 Q Why not?

19 A Because the contingent valuation survey  
20 approach has value independently of the existence of  
21 other products in the marketplace.

22 This study uses the contingent  
23 valuation approach to isolate a particular instance  
24 with a particular price point, for instance, that I  
25 established in my survey of \$400 that made this



1 contingent valuation survey an accurate tool for  
2 estimating the price premium paid for these specific  
3 washing machines that I examined.

4 Q Is it relevant to the question I just  
5 asked about whether contingent valuation was the  
6 right tool, assuming there were comparable  
7 non-Energy Star products available, to the degree to  
8 which the other products were comparable?

9 A That could be relevant, yes.

10 Q How would it be relevant?

11 A It would take significant research to  
12 analyze the research situation. However, the more  
13 similar the products are, then potentially the  
14 economist or others who look at this at those  
15 transaction data could potentially find value in  
16 them. That's outside the scope of my expertise.

17 Q You testified earlier that contingent  
18 valuation is used to value nonmarket goods.

19 A I did.

20 Q Okay. And so if the comparable  
21 products were so similar that there was, in fact, a  
22 market good, would that affect your decision whether  
23 or not to use contingent valuation here?

24 MR. MARCHESE: Objection to form.

25 THE WITNESS: My opinion is that the

1           contingent valuation approach has value in  
2           providing a price-premium-paid estimate that  
3           can be used by others, including the  
4           economists in this case, as one of the  
5           potentially several data points to analyze in  
6           forming an opinion on what damages should be  
7           or whether the class was harmed.

8       BY MR. BELLAMY:

9           Q           Are you aware of any peer-reviewed  
10          publication or study applying contingent valuation  
11          to estimate the price premium associated with a  
12          market good?

13          A           I think I previously established that,  
14          and it took me a long time, you'll recall, to  
15          articulate the response to this question earlier  
16          because I needed to be very careful not to be  
17          misunderstood by what a market good is.

18          Q           I understand your position that these  
19          are not market goods. Take that as a given.

20          A           In which case I've answered this  
21          question before. Contingent valuation approach is  
22          not an appropriate tool. It was never designed to  
23          be a tool for evaluating or estimating the value  
24          that consumers place on actual market goods. It was  
25          designed for the explicit scenario of measuring the

1 value that consumers and others place on nonmarket  
2 goods.

3 Q And I just want to be clear I get an  
4 answer to my question.

5 Are you aware of any peer-reviewed  
6 studies or publications suggesting that contingent  
7 valuation can be used to value market goods?

8 A My answer is no in the full context of  
9 my answers to your previous questions that relate to  
10 this point.

11 Q If you could turn back to Exhibit 1,  
12 Paragraph 8.

13 The last two sentences of Paragraph 8,  
14 you refer to identifying a price premium  
15 attributable to the Energy Star label. That's the  
16 phrase you use, "Energy Star label."

17 Does that mean you were asked to  
18 identify the price premium associated with the label  
19 only as opposed to the Energy Star program  
20 generally?

21 A The answer to your question is that I  
22 was asked to estimate the price premium approach to  
23 the Energy Star label itself.

24 Q Was the price premium you identified  
25 specific to the label as it appeared on these

1 washers?

2 A The price premium I measured relates to  
3 the Energy Star label as affixed to the washing  
4 machines in this case.

5 Q Would you expect that the price premium  
6 associated with the Energy Star label on different  
7 kinds of products like lightbulbs, for example, to  
8 be different than the price premium you identified  
9 here?

10 MR. MARCHESE: Objection, lacks  
11 foundation.

12 THE WITNESS: It's a broad statement.  
13 I would expect some differences, but I'm not  
14 an expert on that.

15 BY MR. BELLAMY:

16 Q And I'm asking you in your expertise of  
17 somebody who conducts contingent valuation surveys,  
18 so we're clear, why would you expect, for example,  
19 the price premium associated with an Energy Star  
20 label on a lightbulb to be different from the  
21 Energy Star label on a washing machine?

22 MR. MARCHESE: Objection, lacks  
23 foundation.

24 THE WITNESS: I think literally you  
25 just asked me would the Energy Star label be

1 different.

2 BY MR. BELLAMY:

3 Q I didn't mean to, if I did.

4 Let me back up a couple of steps.

5 Do you believe that the price premium  
6 associated with an Energy Star label on a washing  
7 machine, like in this case, would be different than  
8 the price premium associated with the Energy Star  
9 label on a lightbulb?

10 MR. MARCHESE: Objection to form, lacks  
11 foundation.

12 THE WITNESS: That's outside the scope  
13 of my expertise.

14 BY MR. BELLAMY:

15 Q You are unable to formulate an opinion  
16 as an expert in contingent valuation whether a price  
17 premium associated with a lightbulb with an Energy  
18 Star label on a lightbulb would be different from  
19 that on a washing machine?

20 MR. MARCHESE: Objection to form.

21 THE WITNESS: To be clear, we would be  
22 talking about price premium shares or  
23 percentages. So a lightbulb might cost a  
24 dollar, a washing machine might cost \$400. A  
25 contingent valuation approach would attempt to

1           measure the percentage of the price paid  
2           that's attributable to the Energy Star label.

3                       So that would be a research project I  
4           could conduct and derive an answer to.

5   BY MR. BELLAMY:

6           Q        Okay. Well, let me reformulate the  
7           question in light of your answer.

8                       You would expect that the percentage of  
9           a price paid for a product labeled as Energy Star --  
10          strike that.

11                      Stated as a percentage, would the price  
12          premium associated with the Energy Star label change  
13          depending on the type of product it was affixed to?

14                      MR. MARCHESE: Objection, lacks  
15          foundation.

16                      THE WITNESS: I think your question  
17          requires me to speculate. I would reserve the  
18          right to do research on the topic before  
19          forming an opinion.

20   BY MR. BELLAMY:

21           Q        And so we're clear, I'm not asking you  
22          what the price premium on Energy Star for a  
23          lightbulb is.

24                      What I'm trying to get at is whether  
25          there are attributes of a product that could impact

1 the value of the price premium associated with the  
2 Energy Star label.

3 MR. MARCHESE: Is that a question?

4 MR. BELLAMY: It is.

5 MR. MARCHESE: Objection to form, lacks  
6 foundation.

7 THE WITNESS: In your question, are you  
8 referring to attributes besides the Energy  
9 Star label?

10 BY MR. BELLAMY:

11 Q Correct. For example, in the  
12 hypothetical I gave you, did you expect the  
13 percentage of the purchase price attributable to the  
14 price premium paid for an Energy Star lightbulb to  
15 be different than the percentage of the purchase  
16 price associated with the Energy Star label on a  
17 washing machine?

18 MR. MARCHESE: Objection, lacks  
19 foundation.

20 THE WITNESS: I think my answer is the  
21 same. It would require research to identify  
22 whether the price premium percentages would be  
23 less, the same, or more.

24 BY MR. BELLAMY:

25 Q Okay. So you're unable to formulate an

1 opinion on that question without conducting  
2 research?

3 A That's correct.

4 Q As you sit here today, can you envision  
5 differences in a product that could impact the  
6 amount of the price premium associated with an  
7 Energy Star label?

8 MR. MARCHESE: Objection, asked and  
9 answered, lacks foundation.

10 THE WITNESS: I would have a lay  
11 opinion only. I'm not a consumer specialist  
12 in how people perceive the Energy Star label  
13 per se.

14 I've certainly reviewed that  
15 literature, and I've documented some of that  
16 literature in my report. But hypothetically,  
17 from a common sense point of view, some  
18 products are more energy intensive than  
19 others, some products are more water-intensive  
20 than others. So from a lay perspective, one  
21 would expect some correlation between value  
22 placed on the Energy Star label and the total  
23 cost of use of a product over some period of  
24 time with respect to energy use and water use.  
25



1 BY MR. BELLAMY:

2 Q Returning back to Paragraph 8, you said  
3 you designed your survey to measure the amount  
4 consumers would pay for a top-loading washing  
5 machine with the same key features as the Maytag  
6 washing machine.

7 What did you mean by "key features"  
8 there?

9 A The key feature is the top-loading  
10 washing machine, the top-loading feature.

11 Also, my survey and the actual  
12 questionnaire does list out other features. I  
13 believe it does list out the 4.0 cubic foot capacity  
14 and then some other features that are part of the  
15 Maytag Centennial washing machine.

16 Q Do you consider all of the features you  
17 identified in your survey to be "key features" as  
18 you used that phrase in your report?

19 A That was the intent of my meaning in  
20 saying "key features." It's the features that I  
21 described in my actual survey.

22 Q And what makes them key features?

23 A Key in the sense that these are  
24 features that, in my research, consumers tend to  
25 want to know about.

1           Q       And we've discussed the retail  
2 transaction data for the Maytag Centennial washers  
3 and the websites you visited. What other sources  
4 did you rely on to identify the key features?

5           A       They would be listed in my list of  
6 considered materials. I looked at advertising  
7 circulars. I looked at the user manual for the  
8 Maytag Centennial washing machine. There are a  
9 number of materials listed in my report that speak  
10 to these issues.

11          Q       Do you have an opinion about which of  
12 the key features of the Maytag washers could impact  
13 the existence or amount of the price premium  
14 associated with Energy Star?

15                   MR. MARCHESE: Objection, lacks  
16 foundation.

17                   THE WITNESS: Could I have the question  
18 reread, please.

19 BY MR. BELLAMY:

20          Q       Do you have an opinion about which of  
21 the key features of the Maytag washers could impact  
22 the existence or amount of the price premium  
23 associated with Energy Star?

24                   MR. MARCHESE: Objection to form.

25                   THE WITNESS: I think your question has

1 an assumption in it that doesn't apply to  
2 contingent valuation methodology. The survey  
3 I designed provides information to the  
4 respondents asking them to assume that all  
5 features in the washing machines that I've  
6 asked them to consider have the same features  
7 with the exception of the Energy Star label.

8 BY MR. BELLAMY:

9 Q So you asked them to assume they had  
10 the same features, but you also identified those  
11 features; is that right?

12 A I did identify those features.

13 Q Another way of getting at my question,  
14 if you were to leave off the list one of the  
15 features that you did identify, do you expect that  
16 would impact the amount of the price premium survey  
17 respondents would say they would pay for  
18 Energy Star?

19 A It's a hard question to answer. It  
20 requires speculation on my part on how respondents  
21 would react to the survey that I programmed and  
22 designed.

23 Q In Paragraph 9 of the first -- sorry,  
24 the second sentence, you refer to the "study target  
25 population."

1                   What does that refer to?

2           A           The "study target population," meaning  
3   the population of individuals that had purchased the  
4   Centennial washing machines and therefore would be  
5   class members.

6           Q           Did you do any research into the people  
7   who comprised the study target population in terms  
8   of gender, age, income, any attribute like that?

9           A           I was not aware of any information that  
10   could give me a demographic read or breakout of the  
11   class members. So I did not actually look at that  
12   because, to my knowledge, that information is not  
13   available.

14          Q           If it were available, would you have  
15   considered it?

16          A           I would consider that.

17          Q           Would it help refine the contingent  
18   valuation survey if you had information about the  
19   demographic makeup of your study target population?

20                   MR. MARCHESE: Objection, lacks  
21   foundation.

22                   THE WITNESS: Potentially, it would be  
23   useful.

24   BY MR. BELLAMY:

25          Q           And how might it be useful?

1           A           It would be information I could use to  
2           help me think through the sample design for the  
3           study.

4           Q           And what does "sample design" in that  
5           answer refer to?

6           A           How I design the actual protocol for  
7           identifying the right respondents for this survey.

8           Q           If you had information about the  
9           demographic makeup of the study target population,  
10          would you attempt to design a protocol that would  
11          identify respondents who would mimic that  
12          demographic?

13          A           I would not attempt to mimic the  
14          demographic information provided to me. It all  
15          depends on how reliable and trustworthy and accurate  
16          this demographic information is and whether, in my  
17          expert opinion, it is something that I can or cannot  
18          rely on. If I identify a lot of missing data or  
19          other reasons to give me suspicions that the data  
20          are not accurate, then potentially I would not use  
21          it at all to design my sample.

22          Q           Understood. Assuming there were no  
23          problems with the data and you had some sense of  
24          what the composition of your study target population  
25          is, as an expert in contingent valuation, would you

1 want your sample design to approximate that  
2 demographic information?

3 A It is a very significant obstacle to  
4 collect the kind of information that you're talking  
5 about. If in a best-case scenario that information  
6 were made available to me and it were accurate and  
7 it were reliable, I would certainly consider it for  
8 targeting my survey sample appropriately. However,  
9 my expert opinion, this is a very rare circumstance  
10 where that kind of information is actually made  
11 available or is available.

12 Q Have you ever had occasion to look into  
13 the existence of demographic information for major  
14 home appliance buyers?

15 A I can't think of anything off the top  
16 of my head on this point. I certainly have  
17 conducted research in the past involving home  
18 appliances. However, I would not consider that  
19 information to be transportable or reliable for  
20 informing what the demographic profile should be for  
21 this specific sample of purchasers of Maytag  
22 Centennial washing machines.

23 Q Have you conducted a contingent  
24 valuation with respect to home appliances outside of  
25 the context of this litigation?

1           A           I have.

2           Q           Can you tell me about that?

3                   MR. MARCHESE: I just want to -- I just  
4           want to caution the witness that, you know, if  
5           there are any confidentiality agreements or  
6           anything like that that, you know, you might  
7           be bound by and you're unsure of, whether  
8           you're at liberty to divulge the specific --  
9           the specifics to answer that question, you  
10          know, just consider that for your answer.

11                   THE WITNESS: The situation is that the  
12          one study that I can think of now that applies  
13          to your question is considered confidential,  
14          and I am not -- or do not have permission to  
15          talk about that particular research study.

16       BY MR. BELLAMY:

17           Q           When you say "confidential," what do  
18          you mean?

19           A           My understanding is that the two  
20          parties in the case have reached an agreement, and  
21          part of that agreement involves individuals such as  
22          myself as an expert on the case are not permitted to  
23          disclose any information related to the work that we  
24          did.

25           Q           Did you review the terms of any

1 agreement or consult with anybody about the scope of  
2 the confidentiality that might apply before this  
3 deposition?

4 A I did not see a need to consult before  
5 this deposition on this point.

6 Q So the only other time you've conducted  
7 a contingent valuation for the same kind of product  
8 at issue in this case, you didn't think that was  
9 going to come up today?

10 MR. MARCHESE: Objection. That's  
11 argumentative. You asked him whether he  
12 conducted some work for a contingent valuation  
13 survey. He said he did, and he said he's not  
14 at liberty to discuss the details of it  
15 because of the confidentiality agreement.

16 I mean, what's your problem? What's  
17 your problem with that?

18 MR. BELLAMY: My problem is that, A,  
19 it's not how confidentiality works. He can't  
20 just say nothing about it. So we're going to  
21 get into the details, and so I'm asking him if  
22 he knows the scope of the confidential  
23 protections he's under because if he came to  
24 this deposition without preparing in that  
25 regard, that's a failing on both of your



1 parts.

2 MR. MARCHESE: What are you even  
3 talking about?

4 BY MR. BELLAMY:

5 Q What was the product at issue?

6 A I have been given a --

7 MR. MARCHESE: You could just say in  
8 general what the product was, not specifics as  
9 to, you know, any make or model or anything  
10 like that.

11 THE WITNESS: A large kitchen  
12 appliance.

13 BY MR. BELLAMY:

14 Q And you conducted a contingent  
15 valuation with respect to the large kitchen  
16 appliance?

17 A I did.

18 Q And was the purpose of that to identify  
19 a price premium?

20 A It was.

21 Q Was it to identify a price premium  
22 associated with Energy Star?

23 THE WITNESS: Counsel, am I at liberty?

24 I feel that -- if I could just -- I've  
25 been given by counsel an understanding that

1           the settlement in this case is a strict one  
2           and that the concern I have is that we're  
3           going down a road of a series of questions  
4           that will allow for the identification of not  
5           only the case parties and exactly which  
6           products are in question.

7       BY MR. BELLAMY:

8           Q           That's not my goal. Your attorney here  
9           will keep me from doing that. I'm just trying to  
10          see how applicable your prior experience is to what  
11          you did in this case, and I'm trying to do that  
12          without you divulging any specific identifying  
13          information.

14                       So I'll repeat my question.

15                      Was your contingent valuation designed  
16          to identify the price premium associated with  
17          Energy Star for this kitchen appliance?

18                      MR. MARCHESE: You can answer yes or  
19          no.

20                      THE WITNESS: As best I recall, yes.

21       BY MR. BELLAMY:

22           Q           Have you conducted any other contingent  
23          valuation studies for any other major home  
24          appliances, inside or outside the context of  
25          litigation?

1           A           Allow me to think for a moment, please.

2                       Your question is about outside  
3 litigation as well as inside, correct?

4           Q           Yes.

5           A           I can't think of any others as I sit  
6 here today.

7           Q           Have you conducted other contingent  
8 valuation studies inside or outside of the context  
9 of litigation to identify the price premium for  
10 Energy Star?

11          A           Outside the one that you and I just  
12 previously established?

13          Q           Correct.

14          A           No.

15          Q           And without telling me the amount at  
16 issue in the other case, was the price premium you  
17 identified the same as the price premium here?

18                       Do you mean --

19                       MR. MARCHESE: Objection, form.

20                       THE WITNESS: If I could ask a  
21 clarifying question: Are you referring to the  
22 actual discount value, or price premium share  
23 percentage?

24 BY MR. BELLAMY:

25          Q           Here you identified 48.5 percent; is

1 that right?

2 A Correct.

3 Q And that's the share percentage?

4 A Yes.

5 Q Okay. So, yes, in terms of the share  
6 percentage, are they the same?

7 A I don't remember the exact number.

8 Q Do you remember if it was the same?

9 A I don't remember the exact number.

10 Q Do you remember if it was higher or  
11 lower?

12 MR. MARCHESE: Objection.

13 BY MR. BELLAMY:

14 Q Than the one here?

15 MR. MARCHESE: Objection, asked and  
16 answered.

17 THE WITNESS: I don't remember how  
18 close or distinct it was from it.

19 BY MR. BELLAMY:

20 Q How long ago was the contingent  
21 valuation you performed in this other matter?

22 A I would estimate approximately a year  
23 before this study was done.

24 Q Were you deposed in that case?

25 A I was.

1           Q           And did that appear on your list of  
2 prior depositions that you produced to us?

3           A           I would have to look at it to confirm.

4           Q           I mean, would you have left it off  
5 because it was subject to a confidentiality order?

6           A           I don't recall counsel telling me I  
7 needed to take case off my record. My assumption is  
8 that it would be on there.

9                       If I could, sir, interject at this  
10 point in time because it may be an appropriate  
11 moment to mention it, since I wrote --

12                      Is it possible that I could see my CV?

13          Q           Sure. I mean, I'm going to introduce  
14 it in time.

15          A           We'll get to that, then.

16          Q           Okay. If you could turn to page 23 of  
17 your report.

18                      Paragraph 36 refers to an online panel  
19 sample owned and operated by Survey Sampling, Inc.

20                      What is an "online panel sample"?

21          A           In this case, it is a prerecruited  
22 sample of U.S. households with Internet access who  
23 have agreed to participate in online marketing  
24 surveys.

25          Q           Are they paid for participating in

1 online marketing surveys?

2 A I'm not sure if the respondents  
3 received any compensation at all for this study.

4 Q Do you know if they are paid generally  
5 to be members of the online panel sample?

6 A They generally receive token  
7 incentives, very small amounts of money. Sometimes  
8 they're enrolled in sweepstakes programs for  
9 give-aways of different kinds; a very modest level  
10 of incentives used.

11 Q You mentioned that the sample is owned  
12 and operated by SSI.

13 What does that mean?

14 A That is a company, Survey Sampling,  
15 Inc., and they own this panel.

16 Q And how does SSI recruit its panel  
17 samples?

18 A They recruit their panel samples very  
19 much like other firms in their space. They recruit  
20 individuals who sometimes respond to online  
21 advertising, asking if individuals are interested in  
22 participating in research or households that  
23 approach them, understood in participating in  
24 research. A variety of means of soliciting  
25 households that would participate in projects

1 online.

2 Q And you mentioned that the pool of  
3 survey participants is limited to people who had  
4 access to the Internet?

5 A In one form or another.

6 Q What does that mean?

7 A There's many different ways to have  
8 Internet access. You can have it through work,  
9 through your household, through your smartphone. So  
10 they need to have some form of Internet access by  
11 whatever means.

12 Q Do you know if SSI provided them access  
13 to the Internet in any instance?

14 A I know they did not.

15 Q You state in Paragraph 35 that you  
16 recruited a "U.S. nationally represented sample."  
17 How are they nationally representative?

18 A It was a sample designed to mimic or  
19 represent the major demographic groups in the  
20 United States across all 50 states and the District  
21 of Columbia.

22 Q And what do you mean by "major  
23 demographic groups"?

24 A Survey Sampling, Inc. has a selection  
25 routine. When they draw a sample from their pool,

1 the pool consists of many, many households that draw  
2 a sample representing a small cross-section of that  
3 larger pool, and they attempt to have that sample be  
4 balanced per the U.S. census demographics for age,  
5 gender, and other categories.

6 MR. MARCHESE: Hey, Galen, just  
7 whenever you have a good breaking point, I  
8 would just appreciate another quick break.

9 MR. BELLAMY: We can do it now.

10 VIDEO OPERATOR: We're off the record  
11 at 11:37.

12 (Brief recess.)

13 VIDEO OPERATOR: This is the beginning  
14 of File 4. We're going back on the record at  
15 approximately 11:48 a.m.

16 BY MR. BELLAMY:

17 Q Dr. Dennis, if you could look at the  
18 three bullet points under Paragraph 35 of your  
19 report.

20 The first paragraph down indicates that  
21 you recruited consumers who had purchased a  
22 top-loading washer since 2005 that is comparable to  
23 the at-issue Maytag washers; is that right?

24 A I see that.

25 Q In what way were the washers the survey



1 respondents purchased comparable?

2 A That refers to the top-loading feature.

3 Q Any other features?

4 A I believe my survey only asks about  
5 that feature. It asks about top-loading and  
6 front-loading to distinguish those two different  
7 types of washing machines.

8 Q And why did your survey focus on only  
9 the top-loading feature as opposed to other features  
10 of washing machines?

11 A I believe that's one of the main  
12 distinguishing features of the Centennial washing  
13 machines, is the top-loading feature.

14 Q Would you have been concerned if you  
15 included purchasers of front-loaders that it could  
16 have skewed the results in some way?

17 A My concern was that respondents may  
18 have trouble understanding my survey questions if  
19 addressed toward a front-loading machine.

20 Q And could you elaborate on that?

21 A Because front-loading machines strike  
22 me as very different. They typically cost more.  
23 They, as I just mentioned, have a higher price  
24 point. I wanted to have washing machines that would  
25 have, at least on this key feature, resemble the one

1 that they actually purchased.

2 Q Did you consider limiting purchases of  
3 top-loaders to top-loaders with comparable price  
4 points to the Maytag washers at issue?

5 A No, I did not consider that.

6 Q Are you familiar with high-efficiency  
7 top-loading washers?

8 A Yes, I have seen those.

9 Q Do you understand that their price  
10 point is comparable to front-loading washers?

11 MR. MARCHESE: Objection, lacks  
12 foundation.

13 THE WITNESS: I'm not an expert in  
14 that, but I'm not surprised that they would be  
15 more expensive than other kinds of  
16 front-loading machines.

17 BY MR. BELLAMY:

18 Q Are you concerned that any of your  
19 survey respondents who may have owned  
20 higher-price-point, high-efficiency top-loading  
21 washers would have been confused by your questions?

22 A No. I think the survey stands on its  
23 own. It's a very clear presentation of the  
24 information to the respondents, and the qualitative  
25 research I did with respondents indicated that my

1 respondents were understanding the questionnaire  
2 very well.

3 Q Did you interview any respondents who  
4 owned a high-efficiency top-loading washer?

5 A I would have to look at the notes that  
6 are part of my report to have a comment on that. As  
7 I sit here today, I don't recall any respondents  
8 volunteering that information. That doesn't mean  
9 that I did not have any of those high-efficiency  
10 washing machine owners in my sample, but I don't  
11 recall that information being volunteered to me.

12 Q So I understood your reason for  
13 excluding purchasers of front-loading washers was  
14 because front-loading washers have a higher price  
15 point than top-loaders.

16 Is there any other reason?

17 A It's a different experience. Also, the  
18 Centennial washing machines are clearly top-loading  
19 machines, and those three washing machines that are  
20 a part of my study all have that in common. So I  
21 thought it was a common sense thing to do for my  
22 survey.

23 Q When you say "different experience,"  
24 what experience is different?

25 A From a user perspective, using a

1 top-loading machine versus a front-loading machine.

2 Q And did your survey ask questions about  
3 using the washing machines at issue?

4 A About using them? About the user  
5 experience?

6 Q Whatever you just said, that the  
7 experience was different. And I asked you what, and  
8 I thought you said that using them was different.

9 So how is that relevant to your survey  
10 if you didn't ask them about using the washers?

11 A As a survey designer, you take into  
12 account a lot of information, and you make  
13 decisions. You don't necessarily ask survey  
14 questions about every single issue you think about.

15 Q Do you know if the user experience for  
16 high-efficiency top-loading washers is different  
17 than a conventional top-loading washer?

18 A I have no opinion on that or  
19 information on that. It's not germane to my  
20 assignment or the design of the survey.

21 Q So including potential purchasers of  
22 high-efficiency top-loading washers with higher  
23 price points that may have had a different user  
24 experience would not be germane to your assignment?

25 A Did you -- and this is just a question

1 of clarification -- did you use the word "potential"  
2 in your question?

3 Q Yes, because we didn't know whether  
4 people in your survey in fact owned high-efficiency  
5 top-loaders or not. That's why I said "potential."

6 A I think I have a very representative  
7 sample here that projects to the seven states that  
8 are the focus of the litigation.

9 The results as I analyze the data  
10 indicate to me, as well as the qualitative research,  
11 that these are very robust findings, so the answer  
12 to your question is no.

13 Q Was it important to the reliability of  
14 your survey that respondents be truthful in their  
15 answers?

16 A I did put a requirement for them in the  
17 survey about that.

18 Q And what was the requirement?

19 A It's -- I would have to look at my  
20 questionnaire. I know I have a screen in there  
21 about their promising to take the survey by  
22 themselves. I recall that in the survey. I was  
23 just trying to remember my exact wording on that  
24 screen, whether I said "truthful" as well. I don't  
25 recall right now.

1           Q           Would it be important to you whether  
2           you instructed them to be truthful or not?

3           A           Actually, it's not necessary to  
4           instruct the respondents to be truthful. These are  
5           statistical surveys of public opinion and consumers.  
6           It's actually very unusual in my field for survey  
7           usage experts to make an assumption or make a  
8           statement to their respondents that their answers  
9           must be truthful.

10          Q           But you thought for a moment that you  
11          maybe did include that instruction, even though it  
12          would be unusual to do that?

13          A           I was trying to remember exactly what I  
14          put in that screen, whether I included the  
15          "truthful." As I mentioned, it's a rare occurrence  
16          to tell respondents to be truthful.

17                    There is a relationship between the  
18          panel household and the panel company. There's  
19          procedures that companies use to assure the  
20          panelists that their information is confidential,  
21          that their anonymity is going to be protected, and  
22          that relationship helps assure that the respondents  
23          are giving truthful responses to the survey  
24          questions.

25          Q           Was there any reason, given its rarity,

1 that you thought you might have instructed consumers  
2 here or respondents here to be truthful?

3 A No.

4 Q Nothing about this survey in particular  
5 that would suggest to you that you would have  
6 instructed them to be truthful?

7 A Nothing at all.

8 Q I take it they're not required to take  
9 any oath like you took today at the beginning of the  
10 deposition?

11 A That also would be very unusual in a  
12 survey.

13 Q And you mentioned they were anonymous?

14 A The respondents were anonymous unless  
15 they provided consent for me to contact them as part  
16 of the qualitative interviews I did.

17 Q So that was the 10 people who you  
18 conducted qualitative interviews for?

19 A That's correct. I was given their  
20 contact information, so I had their name and  
21 telephone number.

22 Q So everybody else was anonymous,  
23 though?

24 A To be clear, those are the 10 people I  
25 actually talked to and interviewed. There were

1 additional respondents in the pretest who provided  
2 consent.

3 Q Other than those people, were the  
4 identities of the survey respondents anonymous?

5 A All other respondents were anonymous.

6 Q Was there any consequence to the  
7 respondents if they didn't tell the truth?

8 A Surveys are done in the United States.  
9 As I mentioned before, we use our best practices to  
10 respect our respondents and encourage them to take  
11 all our survey questionnaires very seriously.

12 Your question is, are there  
13 consequences to not telling the truth? I will  
14 attempt to respond to that question by saying if  
15 respondents falsify data, if the panel company  
16 detects that respondents are not taking the survey  
17 seriously, then they are no longer part of the  
18 panel. They are removed from the panel.

19 Q And how would the sponsoring company  
20 detect that they were not taking the survey  
21 seriously?

22 A There are various techniques used, and  
23 it varies from panel company to panel company. I  
24 would not say that there's one standard way, but  
25 there are techniques for statistically analyzing the



1 survey data to see if respondents are spending too  
2 little time on each survey question; if, for  
3 instance, they are engaged in behaviors that  
4 indicate that they're responding the same way for  
5 each question, for example, always picking the  
6 "strongly agreed" point on a five-point agreement  
7 versus disagreement scale.

8 So there's different statistical  
9 techniques to identify respondents that simply don't  
10 provide reliable data. And that's one of the main  
11 reasons I use SSI is that they have, in my view, a  
12 more mature and sophisticated panel management  
13 program than other panels.

14 Q Did you report any of the survey  
15 respondents to SSI as having not taken this survey  
16 seriously?

17 A I don't need to do that. They have  
18 their own cleaning procedures. So they analyze and  
19 have the ability to analyze data as well.

20 Q So did you not report any respondents  
21 to this survey as having not taken the survey  
22 seriously?

23 A It would not be my job. There's no  
24 expectation that I would do that. It's SSI's job to  
25 manage their own panel, not mine.

1           Q       Did the survey respondents pay any  
2       actual money for the washing machines identified in  
3       the survey?

4           A       To make sure I understand your  
5       question, I have a choice exercise for the  
6       respondents. They choose between two washing  
7       machines.

8           Q       Correct.

9           A       And you're asking if they use their own  
10      money?

11          Q       Correct.

12          A       No, they would not use their own money.  
13      That would not be a normal practice in surveys.

14          Q       You mentioned just a moment ago -- if  
15      you could turn to Paragraph 13, and then the actual  
16      statement is excerpted on page 7 -- it says, "To  
17      participate in the survey, you must agree to answer  
18      the questions by yourself and without asking anybody  
19      else in your household for help."

20                   Is that what you were thinking of  
21      earlier?

22          A       It is.

23          Q       Why is it important that respondents  
24      not receive help from someone else in their  
25      household?

1           A           We want their opinions to be their own.

2           Q           What about help from other sources  
3 other than other people, like Internet searches?

4           A           Internet searches. There's -- the  
5 answer to your question is it depends on the design  
6 of the survey or the research objectives of the  
7 survey. There's some studies whose research  
8 objectives were -- that would be a concern, and the  
9 questionnaire designer would take steps to mitigate  
10 that possibility.

11          Q           And for purposes of the survey you  
12 conducted, were you indifferent to whether consumers  
13 conducted independent research when answering the  
14 survey?

15                   MR. MARCHESE: Objection to form.

16                   THE WITNESS: It was not something I  
17 considered. It was not something even today,  
18 as I sit here today, I'm concerned about.

19                   I can look at the amount of time spent  
20 by the respondents on the surveys, and my  
21 report already documents that the respondents  
22 that spent relatively little time versus a lot  
23 of time on the survey had the same valuation  
24 estimates. So there is a statistical way to  
25 check whether what you're talking about has

1 any impact or not.

2 BY MR. BELLAMY:

3 Q Did you do a statistical analysis of  
4 the consumers who took considerably longer to answer  
5 the survey as opposed to those who answered it  
6 quickly?

7 A No, I did not. I looked at the people  
8 who had relatively short interviewing times and  
9 compared that to the rest.

10 Q Do you think people who would be  
11 conducting independent research would take more time  
12 or less time to answer the survey?

13 A There's no reason for a respondent to  
14 do any independent research at all in participating  
15 in this survey research project.

16 Q But there is no reason they couldn't,  
17 either, right?

18 A There is no motivation. I've done  
19 hundreds of surveys. At last count, I'm up to  
20 around 1500 online surveys that I've designed and  
21 managed, and many of those involve qualitative  
22 research and validation studies with the  
23 respondents.

24 Respondents simply don't take enough  
25 initiative. They're not that interested in the

1 research studies to engage in conducting their own  
2 research while participating in the survey you  
3 design.

4 Q Would it be relevant to your survey if  
5 some consumers did research on what "Energy Star"  
6 meant in answering the question?

7 A My response to that would be I would be  
8 very surprised that they would take that initiative,  
9 mostly because the market research data indicates  
10 that over 90 percent of U.S. consumers already know  
11 about the Energy Star program, and it's a documented  
12 market research finding that the vast majority of  
13 American consumers are actually influenced by the  
14 Energy Star brand and label. So I cannot put  
15 together a compelling reason why a respondent would  
16 make an effort to do research on the Energy Star  
17 brand.

18 MR. BELLAMY: I move to strike as  
19 nonresponsive. That was obviously not my  
20 question.

21 BY MR. BELLAMY:

22 Q Would it be relevant to your survey if  
23 respondents did conduct research into Energy Star in  
24 answering your survey?

25 A I think I just explained why, in my

1 opinion, consumers are not going to engage in the  
2 behavior that you just described.

3 Q And I didn't ask you whether they were;  
4 I asked you whether it would be relevant if they  
5 did.

6 A I'm explaining why it's not relevant  
7 whether they did because I see no motivation on  
8 their part to engage in that behavior whatsoever.

9 Q Okay. So the answer to the question is  
10 you don't think it's relevant if they did conduct  
11 independent research into Energy Star?

12 MR. MARCHESE: Objection, asked and  
13 answered.

14 THE WITNESS: Your question, of course,  
15 has an "if" statement, and I'm denying that  
16 the "if" actually happens.

17 BY MR. BELLAMY:

18 Q Well, that's the point of my moving to  
19 strike your past response. I get that you're saying  
20 it doesn't happen. That's not the question.

21 If it did happen, would that be  
22 relevant to your survey?

23 A No.

24 Q The question that's excerpted on  
25 page 6, it says, "In the past 10 years since 2005,

1 have you purchased a new washing machine or dryer?"

2 Why did you ask whether they purchased  
3 a washing machine or a dryer?

4 A I asked that question intentionally so  
5 that -- let me back up.

6 The first consideration there is that I  
7 wanted to be vague about the criteria I was using to  
8 select the respondents for the contingent valuation  
9 survey.

10 In my opinion, it would have looked  
11 potentially odd to the respondents if I asked about  
12 washing machines exclusively there. And  
13 potentially, respondents could have discerned that I  
14 was interested in washing machine purchasers in my  
15 study, so this was an attempt to disguise my  
16 selection criteria.

17 Q Why would it matter at this stage of  
18 the survey whether respondents surmised that you  
19 were interested in washing machines?

20 A I just answered that question.

21 Q I meant, the slight variation on the  
22 question was, why at this point in the survey was it  
23 important?

24 A I'll just elaborate on my prior  
25 response. This is the screening section of the

1 survey. The screening section of the survey is  
2 where the selection criteria potentially could be  
3 discerned by the respondents. So in the screening  
4 section of the survey, survey designers like myself,  
5 if they're competent, will attempt to disguise the  
6 selection criteria. So this is the stage in a  
7 survey where potentially respondents could figure  
8 out what the selection criteria are.

9 Q And that's relevant at the screening  
10 stage, but not once they have been selected to  
11 participate in the survey?

12 A That is correct.

13 Q Back to the point about independent  
14 research of Energy Star, I understood that you  
15 testified that you didn't think it would be relevant  
16 to your survey whether or not respondents were  
17 conducting independent research into Energy Star,  
18 right?

19 A Yes.

20 Q Okay. And as I understood, part of  
21 your reasoning for that was because you understand  
22 that most consumers are already familiar with  
23 Energy Star.

24 Is that right, or is there something  
25 I'm missing?



1           A           That is in the market research  
2     literature. That's correct.

3           Q           Would it be relevant to your survey if  
4     a consumer learned additional details about  
5     Energy Star than what would have been presented to  
6     them by simply looking at the Energy Star label in  
7     your survey?

8           A           Could you restate or simply say your  
9     question one more time, please?

10          Q           Sure. Let me rephrase it.

11                    The market research you identified,  
12     what specifically did it state about familiarity  
13     with Energy Star?

14          A           I put my findings in my report. It  
15     showed that over 90 percent of the respondents -- or  
16     consumers, rather -- rely on Energy Star. I believe  
17     that it was the second-rated most influential label  
18     after Good Housekeeping as a brand.

19          Q           So did the consumer research you're  
20     referring to say anything about whether purchasers  
21     of top-loading washing machines understand how much  
22     energy an Energy Star washing machine is supposed to  
23     use?

24          A           I did not examine research on the point  
25     you just brought up.

1           Q       Have you seen any research saying that  
2 consumers of top-loading washing machines know that  
3 Energy Star implies a certain annual operating cost  
4 for their washing machine?

5           A       All the research I've done on this  
6 indicates that respondents understand the  
7 Energy Star label as a grade of pass; that the  
8 machine or the product in question has passed the  
9 Energy Star program guidelines, and they understand  
10 it as an outcome of this is approved by the federal  
11 program. That's my understanding of what the  
12 consumer market research indicates about the  
13 Energy Star program.

14          Q       What consumer market research can you  
15 point to that said that consumers understand that  
16 "Energy Star" means it's been approved by the  
17 federal government?

18          A       I think in my list of considered  
19 materials, there are -- there are citations to this  
20 effect.

21          Q       That "Energy Star" means it's been  
22 approved by the federal government in consumers'  
23 minds?

24          A       And that it is a good seal of approval  
25 by federal reviewers.

1           Q           So getting back to the original  
2           question that I still don't think I have an answer  
3           to, did you see any consumer research indicating  
4           that consumers understand "Energy Star" to imply a  
5           certain annual operating cost for washing machines?

6           A           I'm not aware of research on that. And  
7           if it were available, I would look at it potentially  
8           to see what they understand, but it's not material  
9           to the design of my survey.

10          Q           So consumers who did independent  
11          research into information about Energy Star beyond  
12          what the consumer marketing research suggests  
13          consumers generally know, would that be relevant to  
14          your survey?

15                   MR. MARCHESE: Objection, calls for  
16                   speculation.

17                   THE WITNESS: Could you or the court  
18                   reporter replay the question.

19          BY MR. BELLAMY:

20          Q           If consumers who were responding to  
21          your survey did research into aspects of Energy Star  
22          beyond what the consumer research you referenced  
23          indicates consumers generally know about Energy  
24          Star, could that be relevant to your survey?

25          A           No.

1 Q Why not?

2 A The scope of my assignment is and  
3 continues to be to measure the price premium paid  
4 that is attributable to the Energy Star label. I  
5 had a very simple assignment, and I designed the  
6 survey with a similar simplicity to isolate the  
7 value that consumers place on this Energy Star  
8 label.

9 It's not within my scope to take on  
10 additional measurements of people's opinions,  
11 attitudes, perceptions of the Energy Star program or  
12 the label. My focus is very narrow on isolating,  
13 measuring that price premium paid.

14 Q And that wasn't important in trying to  
15 isolate that price premium, that you control the  
16 amount of information about Energy Star that you  
17 included in your survey?

18 A It was important for me to show, in my  
19 view, the Energy Star label, which I did in my  
20 survey. So when you phrase the question, was it  
21 important to me to control this information, the  
22 answer is yes, I controlled the information in  
23 exactly the way I wanted to.

24 Q And so -- but your view is that it's  
25 irrelevant whether respondents went out on their own

1 and learned additional information about Energy Star  
2 than was presented in your survey when responding to  
3 your survey?

4 A I believe my survey is reliable and  
5 accurate, even if some respondents -- and I deny  
6 that's anything that could have happened with any  
7 frequency -- but if there were some respondents that  
8 went online during my survey to learn more about the  
9 Energy Star program, I think that had no impact on  
10 my survey results.

11 Q Were survey respondents allowed to ask  
12 questions during the survey?

13 A Maybe there's a mischaracterization of  
14 my survey. This is an online survey. Respondents  
15 are taking a survey online using their computer,  
16 typically, or tablet, so it's a self-administered  
17 survey where they are the ones answering the  
18 questions.

19 Q So they couldn't type in to anybody and  
20 say, "Hey, I have a question about this question I'm  
21 being asked"?

22 A That's correct. That would be a very  
23 unusual feature in an online survey.

24 Q Why did you screen for consumers who  
25 had purchased a top-loading washing machine in the

1 past 10 years? Why that period of time?

2 A I wanted to cast a broad,  
3 representative net of respondents. I wanted to also  
4 disguise the screening criteria, which I mentioned  
5 before is very important for a survey designer.

6 I thought that it would have looked odd  
7 to the respondents if I chose a year such as 2009.  
8 That's a very specific response category. I think  
9 it could have caused respondents to think harder  
10 than I wanted them to about the selection criteria.  
11 The 2005-to-present way of looking at it, I think,  
12 struck the respondents as making sense. These are a  
13 broad 10-year period. So it was an intentional  
14 design element for me.

15 The other part is that I knew that I  
16 was going to be asking respondents about their most  
17 recent purchases, so it's possible that someone said  
18 they purchased a washing machine at 2005, in which  
19 case, of course, they get further into the survey,  
20 but it's possible that they also purchased and  
21 replaced that washing machine in 2010 or later.

22 So those are some of the considerations  
23 I had in using that time window.

24 Q So if the most recent purchase a  
25 respondent had was in 2005, was their 10-year-old

1 purchase of a top-loading washers, would that  
2 experience be relevant to your -- to the washing  
3 machine market today?

4 MR. MARCHESE: Objection to form.

5 THE WITNESS: Relevant to the market  
6 experience today?

7 The answer to your question is, I'm not  
8 doing a market experience survey. My research  
9 objective was to measure the price premium  
10 paid, not to do a study of market experiences.

11 BY MR. BELLAMY:

12 Q So is it irrelevant that a survey  
13 respondent's last personal exposure to the washing  
14 machine market might have been 10 years before they  
15 answered the survey you provided?

16 MR. MARCHESE: Can I just hear that  
17 back, please?

18 (At which time the following question  
19 was read back by the reporter:

20 "QUESTION: So is it irrelevant that a  
21 survey respondent's last personal exposure to  
22 the washing machine market might have been 10  
23 years before they answered the survey you  
24 provided?")

25 MR. MARCHESE: Objection to form.

1 THE WITNESS: As I understand your  
2 question, it is not relevant. The purchasers  
3 from 2005 provided reliable and valid survey  
4 situated survey responses. And, in fact, if  
5 one were to examine the survey data that I  
6 provided for this case, a very simple analysis  
7 shows that the refrigerator purchasers from  
8 that 2005-2008 time period, they had the same  
9 valuations of the Energy Star label as the  
10 other groups. So just looking at the data  
11 indicates that those respondents are a  
12 representative sample of the whole.

13 MR. MARCHESE: I think you may have  
14 misspoken, by the way. I think you said the  
15 word "refrigerator" purchasers?

16 MR. BELLAMY: I thought we won the  
17 case. This is about washing machines.

18 THE WITNESS: The washing machines,  
19 obviously.

20 BY MR. BELLAMY:

21 Q Yes, of course.

22 Do you think survey respondents were  
23 answering survey questions based on their current  
24 knowledge and experience of Energy Star?

25 A I did ask the respondents to consider



1 what was important to them during the time that they  
2 made their last purchase of a washing machine. So  
3 respondents, to the extent they took that  
4 instruction very seriously, I was asking them to  
5 think about that point in time when they bought  
6 their last washing machine.

7 So it's -- respondents were bringing  
8 their current state of knowledge to this as well as  
9 shown in my qualitative research that I did with  
10 those 10 respondents.

11 Q Did you ask respondents, based on their  
12 historical top-loading purchase, whether they had  
13 purchased an Energy Star washer?

14 A I don't believe I had any questions  
15 about whether they've ever purchased an Energy Star  
16 washing machine.

17 Q Are you aware of any differences in the  
18 competitive environment between 2005 and today that  
19 could impact the value of an Energy Star rating?

20 MR. MARCHESE: Objection, lacks  
21 foundation.

22 THE WITNESS: I personally have not  
23 done historical research on the Energy Star  
24 program, so I don't have a comment or an  
25 opinion on that.

1 BY MR. BELLAMY:

2 Q Do you have an opinion about whether  
3 the price premium associated with the Energy Star  
4 label on these washers could change over the passage  
5 of time?

6 A Your question is whether the label  
7 itself has changed over time?

8 Q No, whether the price premium  
9 associated with the label would change over the  
10 passage of time.

11 MR. MARCHESE: Objection to form.

12 THE WITNESS: That would require  
13 speculation on my part.

14 BY MR. BELLAMY:

15 Q So are you speculating that the price  
16 premium associated with the washer sold in 2009 was  
17 the same as the respondents in 2015 identified?

18 A My testimony is that my survey provides  
19 a reliable and valid measurement of the price  
20 premium of these purchasers, irrespective of when  
21 they made the purchase in this 2005-2015 time frame.

22 Q I understood you to say that you would  
23 have to speculate as to whether the passage of time  
24 would have an impact on the price premium associated  
25 with the Energy Star label.

1 MR. MARCHESE: Is that a question?

2 MR. BELLAMY: Yes.

3 MR. MARCHESE: Objection to form.

4 I wasn't sure what the exact question  
5 was.

6 BY MR. BELLAMY:

7 Q Was I correct that you testified that  
8 you would have to speculate as to whether the  
9 passage of time could have an impact on the price  
10 premium associated with Energy Star?

11 A I did say that earlier in the context  
12 that I'm not an expert in the history of the  
13 Energy Star program.

14 Q So what is your basis other than  
15 speculation for stating that the six years that  
16 passed between 2009 and 2015 did not impact the  
17 price premium attributable to the Energy Star label  
18 on these washing machines?

19 A The basis for my opinion is the  
20 consumer market research that I put forward in my  
21 report that shows the enduring value of the  
22 Energy Star label to consumers.

23 Many of the citations in my report come  
24 from this time period -- not very recently, but  
25 going back to 2009, 2010 -- demonstrating that

1 consumers back then did place a large value on the  
2 Energy Star label.

3 Q Did any of those market research  
4 studies quantify the value? Did they identify a  
5 price premium?

6 MR. MARCHESE: Objection to form.

7 THE WITNESS: No, of course not.

8 BY MR. BELLAMY:

9 Q So other than speculation, what basis  
10 do you have for concluding that the amount of the  
11 price premium did not change between 2009 and 2015?

12 MR. MARCHESE: Objection to form.

13 THE WITNESS: My professional opinion,  
14 based on having done literally thousands of  
15 surveys at this point, is that the Energy Star  
16 label has such a remarkable hold on the  
17 consumer mind -- and it's been that way for a  
18 significant period of time, including the  
19 2009, 2010 time period -- that it is very  
20 reasonable to draw the conclusion that the  
21 consumers value this Energy Star label to such  
22 a great deal that the price premium paid  
23 estimates in my survey are projectable to the  
24 2009, 2010 period when the class members  
25 purchased these washing machines.

1 BY MR. BELLAMY:

2 Q You've conducted, I think you said, one  
3 contingent valuation related to Energy Star; is that  
4 right?

5 A I did mention that earlier.

6 Q What was the year that the products in  
7 question were being sold, or years?

8 MR. MARCHESE: We're not going to get  
9 into that because this just gets into the  
10 details of confidential information.

11 MR. BELLAMY: So you're not going to  
12 let him answer the question of the years they  
13 were sold?

14 MR. MARCHESE: It's confidential.

15 MR. BELLAMY: So are you instructing  
16 him not to answer? You have to instruct him  
17 not to answer, or he has to answer.

18 MR. MARCHESE: I just did.

19 (Witness instructed not to answer the  
20 question.)

21 MR. BELLAMY: So do it.

22 MR. MARCHESE: I just did. Why am I  
23 going to do it again?

24 MR. BELLAMY: If you are confident that  
25 you can instruct the witness not to answer

1           what year the products he conducted the  
2           contingent valuation were sold --

3                   MR. MARCHESE: If you have a problem,  
4           we can call the judge and get it sorted out.

5                   MR. BELLAMY: We might get it sorted  
6           out. I'm trying to explore --

7                   MR. MARCHESE: We can do it right now.  
8           We can call the judge right now.

9                   MR. BELLAMY: It's a kitchen appliance.  
10          What difference does it make what year it was  
11          sold? How could it possibly be confidential  
12          what year they were sold?

13                   MR. MARCHESE: I'm not the witness.

14                   MR. BELLAMY: I'm taking a position.

15                   MR. MARCHESE: I understand. The  
16          position's taken. It's confidential.

17                   MR. BELLAMY: I'm asking you to explain  
18          it.

19                   Why is the year these kitchen  
20          appliances were manufactured confidential?

21                   MR. MARCHESE: Because it is.

22                   MR. BELLAMY: Because it is.

23                   MR. MARCHESE: According to the terms  
24          of the agreement.

25                   So, you know, move on.

1 BY MR. BELLAMY:

2 Q Have you had occasion in any context to  
3 study the impact that the passage of time has on the  
4 price premium associated with the Energy Star label?

5 A I think I gave my best answer to that  
6 in my prior response and with respect to my  
7 examination of the consumer market research on the  
8 public's perceptions of the Energy Star label.

9 Beyond that, that's the research that  
10 I've done.

11 Q Are you a marketing expert?

12 A I'm not technically a market research  
13 expert. I'm a survey research expert. I believe  
14 I'm competent to analyze market research articles  
15 and publications and report on them, but I am an  
16 expert first and foremost in survey research.

17 Q Have you read market research or  
18 publications about the Energy Star label?

19 A I have.

20 Q Can you identify those?

21 A There was -- I cannot tell you the name  
22 of the article. I read an interesting article that  
23 used a conjoint design of the Energy Star label that  
24 quantified the percentage share of the value -- in  
25 that case, it was a study about refrigerators --

1 that could be attributable to the Energy Star label.

2 Q Did you rely on that study in forming  
3 your opinions in this case?

4 A I took it in as background information.  
5 I don't think I relied on it in any way here. My  
6 opinions stand what they are without having looked  
7 at that article.

8 Q And just so I understand it, that  
9 article concerns a contingent valuation of the price  
10 premium associated with Energy Star?

11 A Not contingent valuation. I think that  
12 was a conjoint survey.

13 MR. BELLAMY: Do you want to break for  
14 lunch?

15 MR. MARCHESE: Sure.

16 VIDEO OPERATOR: We are off the record  
17 at 12:29 p.m.

18 (Lunch recess.)

19 (Attachment E, Survey Questionnaire for  
20 the Main Study was marked Dennis-2 for  
21 identification.

22 (Attachment F, Online Screen Captures  
23 for the Main Study Survey Questionnaire was  
24 marked Dennis-3 for identification.)

25 (Attachment H, Statistical Frequencies



1 for the Main Study Survey Results were marked  
2 Dennis-4 for identification.)

3 VIDEO OPERATOR: This is the beginning  
4 of File Number 5.

5 We are going back on the record at  
6 approximately 1:18 p.m.

7 BY MR. BELLAMY:

8 Q Dr. Dennis, I'm handing you an exhibit  
9 that's been marked Number 2 for your deposition.

10 Can you tell me what this document is?

11 A This is an attachment to my Declaration  
12 and Expert Report, Attachment E, Survey  
13 Questionnaire for the Main Study.

14 Q And does this document include every  
15 question that was asked to survey respondents?

16 A Let me do a brief scan.

17 Yes, this is complete.

18 Q If you could please turn to page 3.

19 I notice in what I'll call the sort of  
20 the middle box there, there's a statement in all  
21 caps in brackets: "Terminate if respondent had not  
22 purchased a washing machine or dryer."

23 What are the significance of statements  
24 in all caps and brackets?

25 A All caps indicates those are

1 instructions for the programmer of the survey.

2 Q Okay. So this script would have been  
3 provided to the programmer of the survey?

4 A Yes. What this is, actually, it's the  
5 same questionnaire that I provide the programmer for  
6 programming.

7 Q And then at the very bottom of the page  
8 in all caps and brackets, it says, "Terminate if  
9 wash\_no equals none."

10 Can you tell into what that means?

11 A That means there's a variable called  
12 "wash\_no," and that corresponds to the column just  
13 above that where it says "Washing Machines."

14 So if a respondent selects "None," then  
15 the survey automatically takes the respondent to the  
16 final thank you screen of the survey.

17 Q And by answering "None" for washing  
18 machines, that would exclude anybody who had only  
19 bought a dryer, for example?

20 A That's correct.

21 Q I'm handing you a document marked  
22 Exhibit 3.

23 Take a moment to review that, please.

24 A Okay.

25 Q Can you tell me what that is?

1           A           This is Attachment F to my Declaration  
2           and Expert Report, "Online screen captures for the  
3           main study survey questionnaire."

4           Q           There are no numbered pages, but I  
5           notice at the top of each page, there's a line with  
6           a percentage on it.

7                       What does that correspond to?

8           A           The line that you're referencing is  
9           intended to give respondent feedback on how far  
10          they've completed the survey.

11          Q           Okay. Could you turn to the page that  
12          has "28 percent" on that line?

13          A           Yes. I'm there.

14          Q           Okay. And this question asks the  
15          consumer to finish populating the last two digits of  
16          the year they purchased a top-loading washer; is  
17          that right?

18          A           That's correct.

19          Q           And the way this question would have  
20          been phrased in any individual respondent's survey  
21          would have depended on how they answered the prior  
22          question in terms of whether they identified one,  
23          two, or three washing machines?

24          A           That's correct.

25          Q           If you could turn back to Exhibit 2, I

1 just want to make sure I'm reading this correctly.

2 The page we were just looking at on  
3 Exhibit 3 would correspond to the question on page 4  
4 of Exhibit 2; am I correct?

5 A I have to go back to the 28 percent. I  
6 moved off that page, unfortunately.

7 On page 4 of Exhibit 2 you said, right?

8 Q Yes.

9 A That's correct.

10 Q Okay. I notice that the statement  
11 towards the bottom in brackets "Range check 05  
12 through 15" is not in all caps.

13 What is the significance of no capitals  
14 versus all caps?

15 A In that case, that should have been in  
16 all caps. It was a programming instruction.

17 Q Okay. Is that true also with respect  
18 to the next line that begins "If out of range"?

19 A That is true, yes.

20 Q And that line that says "If out of  
21 range value entered, display prompt "Valid years are  
22 2005 through 2015.'"

23 Explain how that would have worked from  
24 the respondent's -- survey respondent's point of  
25 view.

1           A           For instance, if a respondent had typed  
2           in "04" for 2004, then this message would have been  
3           displayed in a pop-up box, and the pop-up box would  
4           read exactly this message, "Valid years are 2005 to  
5           2015."

6           Q           Because they had previously identified  
7           themselves as having purchased a washer within the  
8           last 10 years?

9           A           That's correct.

10          Q           Did you consider terminating the survey  
11          based on an initial incorrect response as opposed to  
12          providing them a prompt?

13          A           No.

14          Q           Did you give consideration to whether  
15          entering a number outside of the 10-year range would  
16          suggest they did not in fact buy a washer within the  
17          10-year range?

18          A           I had no reason to think that that was  
19          the case. They had already told me that they had  
20          bought the washing machine in the previous 10 years.

21                    I expect for survey questions like  
22          this, there's always the potential for data entry  
23          error like this because they're punching in a  
24          number; they're not picking a closed-end response.  
25          So there's more risk for data entry there. That's

1 why I put in the valid range check.

2 Q And would that pop up in response to  
3 one out-of-range entry, or more than one?

4 A It would pop up -- it would pop up  
5 for -- I'm not sure how that worked. I'm not sure  
6 if it popped up once for each entry error, or did it  
7 just pop up once to cover all three. I don't  
8 remember that.

9 Q I'm handing you what's been marked as  
10 Exhibit 4 for your deposition. Please take a moment  
11 to review it and let me know when you're finished.

12 A Yes, I looked at it.

13 Q Can you tell me what Exhibit 4 is?

14 A This is my Attachment H to my expert  
15 report. The name is "Statistical frequencies for  
16 the main study survey results."

17 Q Okay. I'd like to turn your attention  
18 to the first page of Exhibit 4 and make sure I  
19 understand what these various entries mean.

20 On the far left-hand column, the word  
21 "valid" appears.

22 What does "valid" correspond to?

23 A "Valid" are simply the valid response  
24 options.

25 Q So in this case, it's any one of the 50

1 states that are listed as a valid response option?

2 A Plus Washington, D.C., I believe.

3 Q And then the next column over,  
4 "Frequency," what does that refer to?

5 A "Frequency" is just the raw counts of  
6 respondents that selected that response option.

7 Q So out of the total number of  
8 respondents, 47 people indicated they're from  
9 Alabama?

10 A That's correct.

11 Q And then "Percent," does that  
12 correspond to the percentage of the total that the  
13 raw number is?

14 A If I could --

15 Q Yes.

16 A -- the nuance there is that denominator  
17 is fixed to the 3,498, which corresponds to the  
18 number of cases that started the screening survey.

19 Q And some of those people were screened  
20 out, for example, because they didn't purchase a  
21 top-loading washer?

22 A That is correct.

23 Q Okay. So can you explain to me why you  
24 continue to tie the denominator to the total number  
25 of people who started the survey?

1           A           It's simply an industry standard. It's  
2   what people in my field typically do.

3           Q           And what does "Valid percent" mean?

4           A           "Valid percent" has a denominator that  
5   is equal to the number of respondents that actually  
6   answered the survey question.

7           Q           And "Cumulative percent"?

8           A           "Cumulative percent" is just like it  
9   reads. It's a cumulative percent. So starting at  
10   the top and working your way to the bottom, it  
11   simply adds up the percent numbers.

12          Q           And then if you turn to the next page,  
13   there are -- there are two words towards the bottom  
14   that are "Totals" with two different numbers.

15                   Can you explain what each of those  
16   refers to?

17          A           Yes. On page 2, there is a total there  
18   that corresponds to the valid response options. So  
19   there's 3,377 respondents there who provided a valid  
20   response for the state question. As you can see,  
21   there are 121 cases that did not provide a valid  
22   response. So the grand total that you see at the  
23   bottom there is the valid total plus the system  
24   missing total.

25          Q           And so "system missing," does that just



1 mean somebody didn't answer it, or they somehow  
2 answered incorrectly? What does that mean?

3 A In this case, it would mean they didn't  
4 answer the question because this survey question is  
5 simply a dropdown box. So it means they did not  
6 select an option from the dropdown box.

7 Q And if that were to happen, are they  
8 able to move on to the next question, or does the  
9 survey terminate?

10 A I believe it terminates them. If you  
11 look at the following screen at the top of page 3,  
12 you'll see the "system missing" is 132, which makes  
13 sense. It's the 121 cases being carried forward to  
14 the missing at the question at the top of page 3.

15 Q And so should the number of missing be  
16 increasing with every response, or at least not  
17 decreasing?

18 A That's the way it should work.

19 Q Okay. If you turn to page 5 of  
20 Exhibit 4, does the second question on page 5  
21 correspond to the questions we were looking at on  
22 Exhibits 2 and 3 just a moment ago?

23 A Are you talking about the 28 percent  
24 one, or something else?

25 Q The one that asked how many washing

1 machines they purchased -- and what year, rather?

2 A The 25 percent one; is that right?

3 Q Oh. That's what you're referring to.

4 You're right, the 28 percent.

5 A Yes. Those two correspond.

6 Q And I notice that the beginning of the  
7 text there, it says, "Q wash year\_1," and then there  
8 are two more boxes that follow on the next page that  
9 say "Q wash year\_2" and "Q wash year\_ 3."

10 Do those three correspond to how many  
11 washers they had identified in response to the  
12 previous question?

13 A That's correct.

14 Q So there under "Q wash year\_1," under  
15 "Valid frequency," the first number is 1443.

16 Sorry, under "Frequency," what does  
17 1443 correspond to?

18 A I think those are missing. If I'm not  
19 mistaken, those would be respondents not asked the  
20 question.

21 Q Okay. Is that the same convention  
22 going forward, or sometimes is the nomenclature  
23 missing, and sometimes it didn't?

24 A Usually -- this is a different question  
25 type at this point, so the programming is different,

1 the questionnaire programming is different.

2 So the programmer in this case, in  
3 reference to the variable Q wash year\_1, they chose  
4 to record the system missing cases in that row where  
5 it's blank next to the word "valid." And then in  
6 other places where you have a typical close-ended  
7 question, if it's helpful, I'll just explain that.

8 The question that corresponds to Q wash  
9 year\_1, that requires a numeric text entry which is  
10 different from picking an option from a close-ended  
11 response list.

12 So I think the way it works in that  
13 survey system it has a different way of treating  
14 missing data.

15 Q Okay. Thank you.

16 And then if you could turn to page 8 of  
17 Exhibit 4.

18 How does on the box at the top, "Q wash  
19 year counter," correspond to the question we were  
20 just discussing?

21 A I'm not sure. I would have to look at  
22 that. That's not an actual survey question. That's  
23 a programming code.

24 So you're talking about "Q wash year  
25 counter"?

1           Q       Correct. I guess I'm wondering what  
2       the frequency of 44 corresponds to in that box.

3           A       I'm not sure as I sit here today.

4           Q       Could that be the number of people who  
5       failed to enter a valid range?

6           A       I would -- I would take a few minutes.  
7       If I looked at the actual program survey, I could  
8       answer that question. It's a reasonable hypothesis.

9                   The point here is that this is not a  
10      survey question. This was something that the  
11      programmers put in for their own logic checks on the  
12      survey.

13          Q       Okay. Turn back to page 7 of your  
14      report. Paragraph 14 refers to "Warm-up questions."

15                   Can you explain the idea behind  
16      "warm-up questions"?

17          A       Yes. Warm-up questions are used in  
18      discrete choice surveys, in contingent valuation  
19      surveys to do exactly what my report says they're  
20      intended to do, which is to help the respondent  
21      mentally get into the appropriate frame of mind to  
22      answer questions on a given topic because contingent  
23      valuation involves eliciting from the respondent a  
24      considered response where we're attempting to elicit  
25      their value and make a considered choice between two

1 products.

2 So therefore, it's advisable to ask a  
3 couple of questions or more to help the respondent  
4 think about the topic before you just go straight  
5 into the choice questions.

6 Q And how did you select the type of  
7 warm-up questions that you asked in this survey?

8 A Based on my past experience in  
9 designing these surveys, I wanted to do something  
10 relatively short. I did not want a lot of warm-up  
11 questions.

12 In my expert opinion, this is a topic  
13 matter that is relatively simple. It involves a  
14 durable good, a washing machine, that this person  
15 actually purchased in the last 10 years. So in my  
16 view, I did not need to do much in the way of  
17 warm-up questions because it's a relatively easy  
18 topic for the respondent.

19 I chose these on the basis of past  
20 experience and what I thought would be a good user  
21 experience for the respondent.

22 Q If you'd turn to Exhibit 3.

23 If you'd turn to the page that  
24 corresponds with the line of 39 percent.

25 A I'm there.

1           Q       And the title of that page, "Warmup  
2       question for the contingent valuation survey," am I  
3       correct in assuming that that title did not appear  
4       on the survey respondent's screen?

5           A       That's correct.

6           Q       And then the next page of Exhibit 3  
7       asks where the washer was purchased; is that right?

8           A       That's correct.

9           Q       And then the respondents could either  
10      type in a response, or they'd click "Don't  
11      remember"?

12          A       Yes.

13          Q       And was that the only warm-up question  
14      that was asked: Where they had purchased their  
15      prior machine?

16          A       There's two. There's the question we  
17      just looked at.

18          Q       And so that question was: "Do you  
19      still have the washing machine?"

20          A       Correct.

21          Q       And then the second question is:  
22      "Where did you buy the washing machine?"

23          A       Yes.

24          Q       Did it matter for purposes of the  
25      survey going forward what the respondent typed in

1 the box?

2 A No.

3 Q There was no wrong answer or  
4 disqualifying answer?

5 A No wrong answers.

6 Q So there was nothing they could type in  
7 there that would have them be disqualified from the  
8 survey?

9 A That's correct.

10 Q So explain to me, if you would, how  
11 asking the consumer where they had purchased their  
12 prior machine puts them in the appropriate frame of  
13 mind.

14 A It helps them think about the washing  
15 machine they just purchased. I'm going to be asking  
16 them questions starting on the following screen --  
17 or at least respondent instructions -- where, in my  
18 view, having them think about their last shopping  
19 experience will help them think about the shopping  
20 experience I am about to give them in a contingent  
21 valuation survey.

22 Q And your assumption is that by asking  
23 them where they purchased it, it causes them to  
24 think about their prior shopping experience?

25 A That's correct.

1 MR. MARCHESE: Objection to form.

2 BY MR. BELLAMY:

3 Q Are there other questions you could  
4 have asked; for example, how much they paid for  
5 their last washer?

6 A To answer your question, I could ask  
7 anything I want.

8 Q And what I'm trying to get at is why  
9 you would choose to focus them on where they  
10 purchased their washer instead of anything else  
11 related to the purchase of their prior machine.

12 A In my opinion, this is an effective,  
13 easy question for respondents to answer, and it gave  
14 them the appropriate context to think about the  
15 contingent valuation survey.

16 Q Turn to Exhibit 4, please.

17 If you turn to page 10, the entries  
18 beginning in the left-hand column of the second box  
19 on page 10 that carries onto subsequent pages  
20 correspond to the answers that were typed into the  
21 text box in response to the question: "Where did  
22 you buy your washing machine?"

23 A That's correct.

24 Q So, for example, the first answer was  
25 period, capital N-O. That was the response typed in



1 response to "Where did you buy your washing  
2 machine?" by one respondent?

3 A That's correct.

4 Q And do you know what that response  
5 means?

6 A No. Respondents -- this is not  
7 analyzable data. It was never designed to be  
8 analyzable data.

9 Q Just looking through the list, some of  
10 the answers appear to be, for lack of a more  
11 technical term, gibberish?

12 A Was that a question, or a statement?

13 Q Do you agree with that  
14 characterization?

15 A No.

16 Q So let me direct you to something more  
17 specific. If you turn to page 12, if you follow the  
18 Ds down. I won't torture the court reporter by  
19 reading it in, but it begins "DJWH."

20 Does that strike you as a response that  
21 was intended to be substantive?

22 A If you're -- this doesn't surprise me  
23 at all. You always have a few respondents that will  
24 put in answers that are not what you're intending to  
25 do. That's one of the risks of open-ended questions

1 in doing surveys.

2 And I took on that risk because I  
3 wanted the respondents to actually think about this  
4 topic. Open-ended questions are known to stimulate  
5 the respondent into thinking about the topic that  
6 you bring to them.

7 Q Does the response I just referred to  
8 indicate that the respondent was stimulated to think  
9 about their last washer purchase?

10 A You're bringing up, of course, the  
11 exception to the rule. There's over 1300 responses  
12 here from the respondents, and the vast, vast  
13 majority of them were answered, again, in the spirit  
14 in which I wanted them to have.

15 Q Did you take any steps to exclude the  
16 responses that indicated the respondent wasn't  
17 taking the survey seriously?

18 A No. I explicitly decided not to do  
19 that.

20 Q Why is that?

21 A Respondents may have not -- you're  
22 talking about, of course, a handful of cases out of  
23 over 1300 interviews -- but a few cases that did not  
24 take that particular question seriously doesn't mean  
25 that they're not going to take the rest of the

1 questions seriously.

2 I knew that I had a test later in the  
3 survey where I can measure whether the respondents  
4 are comprehending the information that I'm providing  
5 to them, and that comprehension test is the test I  
6 required the respondents to successfully pass before  
7 they can go to the contingent valuation questions.

8 Q Is there some reason you couldn't treat  
9 the responses to this question as a comprehension  
10 test?

11 A Again -- and I'll be succinct with  
12 this -- open-ended questions have the shortcoming of  
13 not being equally attractive to respondents. You  
14 can have respondents that are very adept and  
15 proficient at close-ended questions, but you give  
16 them an open-ended question, and they refuse to  
17 answer the question or else don't give you a valid  
18 response.

19 But you give that same question to a  
20 respondent with a close-ended question such as an  
21 agree-versus-disagree kind of question, you'll get a  
22 valid reaction from those respondents.

23 So in my professional opinion, it's a  
24 mistake to disqualify respondents at this stage of  
25 the survey because of how they answered the

1 open-ended question.

2 Q The original screening question had  
3 asked respondents whether they had purchased a new  
4 washing machine in the last 10 years. Some of these  
5 responses indicate that the washing machine they  
6 purchased was, in fact, used.

7 Was that a disqualifying response?

8 A I've already answered. I did not  
9 disqualify anyone as a result of their response to  
10 the open-ended question.

11 Q Does an answer suggest to you -- that  
12 they actually purchased a used washing machine  
13 suggest that they didn't understand the screening  
14 question?

15 A It's always a possibility. That's why  
16 I designed the comprehension test and put it in my  
17 contingent valuation survey.

18 Q On page 18 of Exhibit 4, the second box  
19 on that page, does that correspond to the "Don't  
20 remember" responses?

21 A It does.

22 Q And so am I right that 151 people  
23 didn't remember where they purchased their washer?

24 A That's correct. Again, not a  
25 surprising result.

1 Q Can you turn back to report on page 7.

2 You state on the second-to-the-last  
3 sentence of Paragraph 14 that you administered  
4 warm-up questions so that respondents would be  
5 prepared to think about what they value in a  
6 top-loading washing machine; is that right?

7 A Yes. That's what I wrote.

8 Q And why did you want them to focus on  
9 what they valued in a top-load washing machine?

10 A Because that's -- the topic of my  
11 contingent valuation survey is to have them think  
12 about the value and what they value in a washing  
13 machine.

14 Q And how did focusing in on where they  
15 purchased their washer focus them on what they value  
16 in a washing machine?

17 A I think I previously explained that  
18 their most recent purchase is akin to what I'm going  
19 to be asking them to do here, which is to think  
20 about a shopping trip that they're taking where  
21 they're going to be comparing two washing machines.

22 So this is why I ask about the past  
23 store where they purchased the machine.

24 Q I understand that it might put them in  
25 mind of their last shopping trip, but you

1 specifically said you wanted them to think about  
2 what they value in a top-loading washer, and I'm  
3 wondering why asking them to remember where they  
4 bought it would cause them to remember what they  
5 value in a washer.

6 A Well, when people go shopping and they  
7 purchase something, they're purchasing on the basis  
8 of what they value. So therefore, actually thinking  
9 about their recent or past purchase helps them think  
10 about valuing because that's how people typically  
11 shop. They think about what they value, and they  
12 buy what they can afford.

13 Q So in your professional opinion, asking  
14 somebody who, for example, purchased a washing  
15 machine at Sears 10 years ago would put them in mind  
16 of what they value in a washing machine?

17 A It will help them think about the  
18 topic, yes.

19 Q Why not identify a specific feature  
20 like brand or capacity as opposed to where they  
21 purchased it?

22 A Then I would be getting questions from  
23 you about priming the respondent.

24 Q Is that the only reason you phrased  
25 your survey in such a way; to anticipate deposition

1 questions?

2 A I frame my questions in order to get  
3 the most objective, impartial, accurate data  
4 possible.

5 Q And you think asking about price, for  
6 example, would have generated answers that weren't  
7 objective?

8 A That's not what you asked me. You  
9 brought up brand.

10 Q Okay. So are you making a distinction  
11 between brand and price?

12 A I am.

13 Q Okay. So for purposes of a warm-up  
14 question, you would not choose price over brand for  
15 what reason?

16 A I haven't thought about it, seriously.  
17 My goal was to have a short warm-up section of the  
18 survey. I believe in keeping questionnaires as  
19 short as possible. I think you get better survey  
20 data from respondents when you're respectful of  
21 their time.

22 So I chose these two questions. I  
23 could have had 10 questions, 20 questions for the  
24 warm-up questions. I chose two because in my  
25 professional judgment, that's all that was needed

1 here.

2 Q Do you think asking the wrong kind of  
3 warm-up questions can have an adverse impact on  
4 survey results?

5 MR. MARCHESE: Object to form.

6 THE WITNESS: I think that's a  
7 tautology. You just said if you did something  
8 wrong, could it result in something wrong?

9 BY MR. BELLAMY:

10 Q Well, I'm trying to ask whether asking  
11 the wrong warm-up questions could affect the outcome  
12 of the substantive survey?

13 MR. MARCHESE: Object to form.

14 THE WITNESS: I think the tautology is  
15 complete, and you just said it a second time.

16 Of course, if you have poorly worded  
17 questions anywhere on a survey, that could  
18 result in poorly collected data.

19 BY MR. BELLAMY:

20 Q So you could focus the respondent on a  
21 feature that could have -- let me back up.

22 Rather than asking them where they  
23 purchased it, had you focused them on the price they  
24 paid, do you expect that you would have had  
25 different substantive answers to the rest of the



1 survey?

2 A I haven't thought about it. I would  
3 need to -- and would probably do research to even  
4 investigate that as a hypothesis.

5 Q You state in the middle of Paragraph 14  
6 that the warm-up questions help the purchasers begin  
7 thinking in the context of their preference for  
8 top-loading washing machines based on their shopping  
9 for their last purchase of a top-loading washing  
10 machine; is that right?

11 A Yes. That's what it reads.

12 Q Then why was it relevant that the  
13 survey respondents had, quote/unquote, shopped for  
14 their last washing machine?

15 A I think I've answered this question a  
16 few times. This is a contingent valuation survey.  
17 I'm asking the respondents to consider two different  
18 washing machines and make a choice between those  
19 two, simulating a shopping exercise.

20 Therefore, my warm-up questions were  
21 designed for the purpose of helping the respondents  
22 get into the appropriate frame of mind to provide me  
23 reliable answers in my contingent valuation survey.

24 Q Are you making any distinction between  
25 somebody who purchases a washing machine and

1 somebody who, say, researches the washing machine?

2 MR. MARCHESE: Objection to form.

3 THE WITNESS: What is your question in  
4 reference to?

5 BY MR. BELLAMY:

6 Q What we're talking about, the warm-up  
7 question.

8 MR. MARCHESE: Objection, form.

9 THE WITNESS: Well, let's look at the  
10 warm-up questions, then.

11 The first warm-up question is: "Do you  
12 still have the washing machine at home?"

13 There's no reference to --

14 BY MR. BELLAMY:

15 Q Prior to that on that warm-up question,  
16 it says, "You said earlier that you purchased a  
17 top-loading washing machine," so I'm asking you  
18 whether you draw a distinction between "purchased"  
19 and "shopping."

20 A Show me again where you are, please.

21 Q Where you just were, the blue box on  
22 the top of page 8.

23 A And what is your question about this  
24 survey question?

25 Q "You said earlier that you purchased a

1 new top-loading washing machine in 2010 for your  
2 home," and you used the word "purchase" there. And  
3 in the text of your report, you referred to the word  
4 "shopping."

5 And I'm asking you whether you're  
6 drawing a distinction between "shopping" and  
7 "purchased."

8 A You mentioned shopping in the context  
9 of my contingent valuation survey?

10 Q Yes. Paragraph 14.

11 A You're taking a questionnaire and  
12 wondering why -- a very confusing question.

13 Q Well, let me ask it this way --

14 A I've answered this question, I think,  
15 four times now.

16 Q You just said you didn't understand the  
17 question, so that surprises me. I want to make sure  
18 you understand it.

19 Did you assume by asking somebody if  
20 they had purchased a washing machine in the last  
21 10 years that they were the person who shopped for  
22 it?

23 A I am not making a distinction for the  
24 purposes of this question with the number 39 on it  
25 about the level of involvement that that person had

1 if shopping. They may have had very little  
2 involvement in the shopping. They may have shopped  
3 a lot.

4 The question is, "You said earlier that  
5 you purchased a new top-load washing machine."  
6 There is no data being collected here for analysis.  
7 The only point here is to have respondents start  
8 thinking about the exercise I'm about to give them  
9 in the contingent valuation survey.

10 Q Well, I understood that the purpose was  
11 to put them in mind of when they purchased their  
12 last machine.

13 A That's right. And the connection  
14 there, of course, is that helps them think about a  
15 shopping scenario that I present to them in the  
16 contingent valuation survey.

17 Q All right. So it's irrelevant to you  
18 whether they were the person who did the research  
19 into the washer, or if they just provided their  
20 credit card and bought it?

21 A Well, there are a lot of assumptions in  
22 that question. I don't have to make, and it's not  
23 material to me, to make an assumption about the  
24 level of involvement of that particular respondent  
25 in purchasing this washing machine.

1           Q       Do you know whether the respondents had  
2       purchased an Energy Star washing machine as their  
3       last washing machine?

4           A       My survey doesn't ask any questions on  
5       that, so I do not have data on that.

6           Q       If you could turn to page 5.

7                   Under the heading, Key findings from  
8       the survey, I'm focusing on Paragraph 11(a).

9                   The first sentence, it says,  
10       "Purchasers overwhelming preferred to purchase a  
11       top-loading washing machine with the Energy Star  
12       label instead of one without the label when the two  
13       types of top-loading washing machines had the same  
14       price and are the same in all other respects."

15                   Did I read that right?

16          A       I believe you did.

17          Q       Okay. So the two hypothetical washers  
18       that you're referring to in 11A are exactly the  
19       same, except one has Energy Star and one does not?

20          A       One has the Energy Star label, and the  
21       other one does not.

22          Q       And you're not assuming -- well, are  
23       you assuming that the respondents are supplying any  
24       information about the washing machines that aren't  
25       specified in your survey?

1           A           Could you repeat that question, please?

2           Q           Sure. I'll give you an example, too.

3                   Are you assuming that any information  
4 not provided about the two washing machines, that  
5 the survey respondents are not supplying it, like  
6 their quality ratings or anything else that's not  
7 specifically identified in your survey?

8           A           I don't -- you started the question  
9 with a passive verb. I'm not sure who's doing what  
10 in your sentence.

11          Q           Let me ask it this way: Is there any  
12 information you're assuming the respondents are  
13 assuming about either of the hypothetical washing  
14 machines that you did not provide them?

15          A           Am I assuming that they are bringing --  
16 MR. MARCHESE: Objection to form.

17                   THE WITNESS: -- information that I'm  
18 not providing?

19 BY MR. BELLAMY:

20          Q           Correct.

21          A           I'm not making any assumptions about  
22 information that they are bringing. Whatever  
23 information they have in their minds, that's the  
24 information they have in their minds. I'm not  
25 making any assumption about what information they

1 have.

2 Q But the purpose of the survey is you --  
3 you intended to assume in the survey that the two  
4 washing machines were identical in every way except  
5 for the presence of the Energy Star label on one; is  
6 that right?

7 A That's what my instructions are in the  
8 survey to the respondents.

9 Q So the conclusion in 11A, in  
10 Paragraph 11A, is that 97.5 percent of respondents  
11 preferred the washing machine with the Energy Star  
12 label on it?

13 A That is correct.

14 Q Is there any other conclusion that  
15 you -- that's embedded in 11A that I've missed?

16 A That is the conclusion.

17 Q Does a consumer's individual  
18 understanding of Energy Star have any relevance to  
19 the conclusion in 11A?

20 MR. MARCHESE: Objection, lacks  
21 foundation.

22 THE WITNESS: Did a consumer's  
23 individual --

24 BY MR. BELLAMY:

25 Q Does a consumer's individual

1 understanding of Energy Star have any relevance to  
2 the results in 11A?

3 MR. MARCHESE: Objection, lacks  
4 foundation. Objection to form.

5 BY MR. BELLAMY:

6 Q Let me rephrase it because that was  
7 confusing.

8 Does a survey respondent's -- or did a  
9 survey respondent's individual understanding of  
10 Energy Star have any relevance to the conclusion in  
11 11A?

12 MR. MARCHESE: Objection, form, lacks  
13 foundation.

14 THE WITNESS: So this is a preference  
15 question. This is a question that -- which I  
16 called the "vote" or "referendum" question in  
17 the survey where I'm measuring consumers'  
18 preferences for one of two products.

19 You're asking me a question about what  
20 their understanding is. I'm actually  
21 measuring preferences here with this survey.

22 BY MR. BELLAMY:

23 Q So the survey measures whether they  
24 prefer Energy Star or not, not why they prefer it?

25 A That is correct.



1           Q           And so the answer to my question is it  
2           was irrelevant what an individual survey respondent  
3           thought of Energy Star; the only relevant question  
4           is did they prefer it or not?

5           A           "Irrelevant," in my opinion, is a harsh  
6           word, but it's not something I'm trying to measure  
7           in the survey.

8           Q           Did you make any assumptions about what  
9           the survey respondents understood the Energy Star  
10          label to mean, if anything?

11          A           "To mean, if anything?"

12                    Again, I was asked and the scope of my  
13          responsibility was to measure the price premium paid  
14          attributable to the Energy Star label. That means  
15          measuring the price premium paid, and I was not  
16          doing a study measuring what people understood the  
17          Energy Star label to mean, how influential is it,  
18          how they think about the Energy Star label.

19                    So that was not my research objective;  
20          and therefore, I do not have survey questions on  
21          that because it's not within my scope.

22          Q           In Paragraph 11(b), the second sentence  
23          you state, "For example, the average purchaser would  
24          pay \$205.91 for the top-loading washing machine  
25          without the Energy Star label when the same

1 top-loading washing machine having the Energy Star  
2 label is available for \$400."

3 Did I read this right?

4 A You did.

5 Q Okay. Did you take any steps to  
6 determine whether any top-loading washing machine  
7 sold in 2009 and 2010 for \$205.91?

8 A That's not material to my enterprise.  
9 I'm measuring, again, the price premium paid as a  
10 result of the Energy Star label.

11 Q So it wouldn't matter to your  
12 conclusion in 11B if no top-loading washer was  
13 available on the market for \$205.91?

14 A No, it would not matter in the  
15 slightest. My project was to measure how much value  
16 people put on the Energy Star label.

17 Q From Paragraph 11A, it says,  
18 "2.5 percent of survey respondents stated they would  
19 prefer the top-loading washer without the Energy  
20 Star label."

21 A That's correct.

22 Q Okay. Would those consumers require a  
23 discount in order to accept an Energy Star-labeled  
24 washer?

25 A Yes. That's how my survey is actually

1 structured is to measure that discount.

2 Q Were those consumers' preferences taken  
3 into account when you calculated the average  
4 discount of 48.5 percent that you calculated in 11B?

5 A No. That would be inappropriate. I  
6 calculated their own percentage discount among those  
7 few respondents that selected the machine without  
8 the Energy Star label.

9 Q Did the Energy Star program change  
10 between 2005 and 2015 as it applies to top-loading  
11 washers?

12 A I'm not aware of changes. It's not  
13 something that I looked at. I was measuring the  
14 impact of the Energy Star label on people's  
15 preferences, so I did not look beyond the  
16 Energy Star label itself, which was, again, the  
17 subject of my inquiry.

18 Q Are there changes that could  
19 potentially impact the price consumers would be  
20 willing to pay for the Energy Star label on a  
21 clothes washer?

22 MR. MARCHESE: Can I hear that back,  
23 please?

24 (At which time the following question  
25 was read back by the reporter:

1 "QUESTION: Are there changes that  
2 could potentially impact the price consumers  
3 would be willing to pay for the Energy Star  
4 label on a clothes washer?")

5 MR. MARCHESE: Objection to form.

6 THE WITNESS: Changes with respect to  
7 what?

8 BY MR. BELLAMY:

9 Q Well, we'll leave it open-ended. Any  
10 changes that could impact the price consumers would  
11 be willing to pay on an Energy Star label on a  
12 clothes washer.

13 MR. MARCHESE: Objection to form.

14 THE WITNESS: It strikes me that calls  
15 for a lot of speculation on my part. I'm not  
16 comfortable with answering such a speculative  
17 question.

18 BY MR. BELLAMY:

19 Q Do you know about any efforts the  
20 federal government has to promote the Energy Star  
21 program?

22 A In my literature review, I've seen  
23 efforts by the EPA and the Department of Energy to  
24 promote the program.

25 Q Do you think those promotional efforts

1 could have a positive impact on how much money  
2 people are willing to pay for an Energy Star label?

3 MR. MARCHESE: Objection, lacks  
4 foundation.

5 THE WITNESS: Not within my scope or  
6 area of expertise, but I would -- I would  
7 expect, of course, that if someone advertises  
8 and tries to promote something, that hopefully  
9 it has some impact.

10 BY MR. BELLAMY:

11 Q All right. So that is an example of  
12 the kind of change I was thinking of when I said,  
13 "Could you think of any changes that could  
14 potentially impact the price premium associated with  
15 the Energy Star label?"

16 So promotion is one.

17 What about negative publicity?

18 A All these are possibilities and  
19 speculations. What I know from the literature is  
20 that the Energy Star has been a very influential  
21 mark in consumer research and has proven time and  
22 time again to have been an influential mark over the  
23 last 10 years.

24 Q Have you read any of the articles or  
25 other publications that are critical of the

1 Energy Star program?

2 A I have not.

3 Q Do you have a view of whether negative  
4 publicity could have a negative impact on the price  
5 premium consumers are willing to pay for Energy Star  
6 products?

7 A I think that calls for speculation.  
8 It's possible. It's not something I've researched.

9 Q Are you familiar with the fact that  
10 there are certain tax incentives and rebates that  
11 have been available at different times for  
12 Energy Star-labeled products?

13 A Yes, I am.

14 Q Could the existence or nonexistence of  
15 such rebates have an impact on the price people are  
16 willing to pay for Energy Star-labeled products?

17 A I think in the qualitative research I  
18 did, there's evidence that respondents were thinking  
19 about rebate programs, at least some of them, that  
20 were publicly available and publicly known to the  
21 consumers.

22 Q Do you know whether the -- any rebate  
23 programs that were in existence in late 2015 when  
24 you conducted the survey were equivalent to rebate  
25 programs that were in place in 2009 and 2010?

1           A           It's not an area that I focused on. I  
2 understand rebate programs have been around for a  
3 while. They're not new.

4           Q           Do you know whether the rebate programs  
5 have been constant for Energy Star, or if they've  
6 fluctuated over time?

7           A           It's not something I've researched.

8           Q           Do you have a view of whether the price  
9 of energy at any given time could impact consumer  
10 preference for an Energy Star-labeled appliance?

11                   MR. MARCHESE: Objection, lacks  
12 foundation.

13                   THE WITNESS: Well, simple  
14 Economics 101 would indicate that if energy  
15 prices are high, people in their  
16 self-interest, they care more about energy  
17 savings.

18 BY MR. BELLAMY:

19           Q           And do you think when energy prices are  
20 high, that could impact the price premium associated  
21 with Energy Star on Energy Star-labeled products?

22                   MR. MARCHESE: Objection, lacks  
23 foundation.

24                   THE WITNESS: I have not seen any  
25 research to prove that point.

1                   What I've seen is the public holding in  
2                   high esteem the Energy Star label.

3       BY MR. BELLAMY:

4           Q       Did any of the documents you referred  
5       to discussing the Energy Star program reflect that  
6       the public understanding of perception of  
7       Energy Star changed over time; either increased,  
8       decreased, or varied?

9           A       As I sit here today, I can't think of  
10      any articles on that point.

11          Q       Did you see any graphs or charts in any  
12      of the documents you reviewed suggesting public  
13      awareness changed year over year for the Energy Star  
14      program?

15          A       I would have to go through my materials  
16      and refresh my memory.

17          Q       Did your survey ask the respondents  
18      whether they knew what Energy Star was in 2009 or  
19      2010?

20          A       My questionnaire stands on its own.  
21      Again, it's not something I measured or had any  
22      intention of measuring.

23          Q       Did your survey ask whether respondents  
24      knew what the Energy Star program was in 2009 or  
25      2010?



1           A           I do not have questions about what  
2   people understood the Energy Star program to be in  
3   that time period.

4           Q           Is it relevant to your opinions in this  
5   case whether the respondents had an accurate  
6   understanding of what "Energy Star" means?

7           A           As I've already explained, that is not  
8   material to my being able to reliably estimate the  
9   price premium paid for the washing machines with the  
10   Energy Star label; so, therefore, I did not measure  
11   that.

12          Q           So if a respondent who identified in a  
13   400-dollar price premium valued the Energy Star  
14   label because they thought it meant superior  
15   quality, their motivation for identifying the  
16   Energy Star washer that way is irrelevant to your  
17   conclusions?

18          A           I would just say more precisely that  
19   whatever the consumers perceived and valued the  
20   Energy Star label to mean, then that's what they  
21   based their survey responses on in my survey.

22          Q           You -- in comparing the two  
23   hypothetical washers in your survey, you said they  
24   had the same brand, I believe; is that right?

25          A           Yes. I held brand constant.

1 Q And you held it constant but did not  
2 specify a brand.

3 Was there any reason you didn't specify  
4 the brand?

5 A Yes.

6 Q And what's that?

7 A I did not want the respondents to have  
8 their responses influenced by brand loyalty or brand  
9 preferences.

10 Q And do you think the inclusion of a  
11 brand could have impacted the amount of the price  
12 premium that you identified through your survey?

13 A I think that it would have potentially  
14 created biased results if I were to have included  
15 the brand of washing machines in my contingent  
16 valuation.

17 Q And so by "biased results," do you mean  
18 that the \$205.91 may have been higher or lower if  
19 you had included the brand?

20 A I can't speculate on the direction,  
21 obviously, of the bias. My goal is to isolate the  
22 impact of the Energy Star label.

23 The more variables I put in there and  
24 try to manipulate, the less clean my analysis is  
25 going to be. What I've set up is a very clean

1 choice for the respondents so I could isolate the  
2 value of the Energy Star label.

3 Q And I think I understand that. I just  
4 want to make sure I understand all the details.

5 Even if you used the same brand for the  
6 two hypothetical washers, you still think -- well,  
7 do you think that would have had a biasing effect on  
8 the results of your survey?

9 A My professional opinion is that that's  
10 a potentially confounding element in the survey  
11 design, the consequences of which are difficult to  
12 predict, and there is not a compelling reason to  
13 take the risk of adding a confounding variable.

14 Q If you could turn to page 9 of your  
15 report, the box at the top lists a number of bullet  
16 points that I understand to be the features that  
17 both washers share; is that right?

18 A That's correct.

19 Q And the third bullet point down says  
20 "Brand name" but doesn't specify what the brand is;  
21 is that right?

22 A That's right.

23 Q If you go down one, two, three -- I  
24 think four more bullet points for "cubic foot  
25 capacity," it actually does include a specific

1 number.

2 Why did you include a specific number  
3 instead of just saying, for example, they have the  
4 same capacity?

5 A The same reason I added the top-load  
6 feature. I was attempting to have the list of  
7 features appear credible and realistic to the  
8 respondents, so I thought having a description there  
9 that corresponds to the actual Maytag Centennial  
10 washing machines would be useful.

11 MR. MARCHESE: Galen, whenever you have  
12 a good stopping point, can we take a quick  
13 break?

14 MR. BELLAMY: Yeah. Let's just finish  
15 this up, and then we'll be good.

16 MR. MARCHESE: Sure.

17 BY MR. BELLAMY:

18 Q And you didn't ask respondents prior to  
19 this point the capacity of their prior purchase that  
20 they had purchased, right?

21 A That's correct. My questionnaire  
22 speaks for itself. I do not ask that question.

23 Q I just want make sure I understand.  
24 You specified the cubic foot capacity rather than  
25 just saying they were the same because why?

1                   Could you explain that one more time,  
2     please?

3                   Why did you specify the cubic foot  
4     capacity as opposed to just saying they have the  
5     same capacity?

6           A       Well, I'll say what I mentioned  
7     earlier, which is that in my experience in designing  
8     contingent valuation surveys, it's helpful to have  
9     some detail in the information provision part of the  
10    survey. And that's what this is. It's part of the  
11    information provision part of the survey.

12                   Having some element of detail there  
13    helps give the respondent a more realistic choice  
14    that they're about to face in shopping for these  
15    two -- these two washing machines.

16                   Also, I think I mentioned previously  
17    it's useful to have the shopping trip and the choice  
18    correspond to the features of the Maytag Centennial  
19    washing machines that are -- that are the focus of  
20    this case. That's why I included the top-load  
21    feature and this particular screen that we're  
22    examining now and also the 4.0 cubic foot capacity  
23    feature.

24                   MR. BELLAMY: Okay. We can take a  
25    break.

1 VIDEO OPERATOR: We're off the record  
2 now at approximately 2:19 p.m.

3 (Brief recess.)

4 VIDEO OPERATOR: This is the beginning  
5 of File 6. We're going back on the record  
6 approximately 2:36 p.m.

7 BY MR. BELLAMY:

8 Q Dr. Dennis, if you could please turn to  
9 Exhibit 2, which is your Attachment E, and turn to  
10 page 7, if you would, under the heading "Contingent  
11 valuation survey section."

12 A Yes, I'm there.

13 Q You asked the respondents to assume  
14 that they were going shopping for a new top-loading  
15 washer to replace the one that they had purchased  
16 which they identified in the screening section; is  
17 that right?

18 A That's correct.

19 Q Why did you have them do the mental  
20 exercise of replacing their actual washer?

21 A To help make the survey scenario  
22 credible and realistic to the respondent.

23 Q Could their level of satisfaction or  
24 dissatisfaction with the washer they were  
25 hypothetically replacing have impacted their

1 responses?

2 MR. MARCHESE: Objection, lacks  
3 foundation.

4 THE WITNESS: It's -- I mean, I'm  
5 giving them information about two washing  
6 machines to consider and which one they'd  
7 prefer. I'm not asking them to think about  
8 their level of satisfaction or  
9 dissatisfaction. It causes for speculation.

10 Where I sit here today, I wouldn't  
11 think that would have an impact.

12 BY MR. BELLAMY:

13 Q You did ask them to put in mind that  
14 they were buying a new washer to replace their old  
15 one, right?

16 A I did.

17 Q But you don't think the fact that they  
18 may have been unhappy with their current washer  
19 could have impacted their shopping decision, their  
20 hypothetical shopping decision, for the new washer?

21 MR. MARCHESE: Objection, lacks  
22 foundation.

23 THE WITNESS: I mean, a better, more  
24 accurate response from me is whatever the  
25 respondents are bringing to the survey in

1 terms of their understanding of lots of things  
2 you've asked me about today, whether it's the  
3 Energy Star label, their current knowledge  
4 much washing machines, their current  
5 preferences and opinions about different kinds  
6 of washing machines, these are all legitimate  
7 factors that could influence how they prefer  
8 Washing Machine A or Washing Machine B and the  
9 scenarios I gave them.

10 BY MR. BELLAMY:

11 Q If you turn to page 9 of Exhibit 2, it  
12 lists features we've described -- we've discussed  
13 before. It says the two washers are the same, and  
14 then it lists those features.

15 By asking them to replace -- to imagine  
16 replacing their current washer, would it matter if  
17 it put them in mind of a feature that's not listed  
18 here, like reliability or quality?

19 A If they -- I've told them to assume  
20 that the washing machines are the same in all  
21 respects except for the Energy Star label. So  
22 that's the information that I'm giving the  
23 respondents.

24 When you turn to page 10, I have the  
25 explicit instruction, "The washing machines are the



1 same in all respects except one." So I don't think  
2 it's material or in any way having a negative impact  
3 on my survey if I don't list all the features on  
4 page 9 that they might care about.

5 Q And the reason I ask is on page 8, you  
6 ask -- you instruct the respondents to take a few  
7 seconds to recall what features were important to  
8 you when you purchased the top-loading washing  
9 machine.

10 And my question is: The fact that  
11 whatever feature may have been important to them  
12 isn't on your list, it shouldn't make a difference  
13 in the outcome of the survey?

14 A No, not for the reasons I've already  
15 explained.

16 Q If you turn to page 12 of Exhibit 2.  
17 On this chart, is this the first time  
18 the survey respondents would have seen what the  
19 actual price being charged for Washing Machine A and  
20 Washing Machine B was?

21 A I believe that's correct. Let me just  
22 do a double-check.

23 Yes, that is correct.

24 Q And prior to that, they knew the price  
25 was the same, but not what the price was?

1           A           That's true.

2           Q           And did they have the option in  
3 response to this question to choose neither or none  
4 of the above?

5           A           No. At this point, it's not  
6 appropriate to give them a "don't know" or "not  
7 sure" answer.

8           Q           Well, beyond "don't know" and "not  
9 sure," they couldn't decline to purchase either of  
10 these washers?

11          A           That's right. This is a referendum  
12 vote question.

13          Q           So did they have to choose either  
14 Washing Machine A or Washing Machine B to proceed?

15          A           That's right. They could skip this  
16 question, but then I would not use their data for  
17 the analysis --

18          Q           If you look at the chart on page 12 of  
19 Exhibit 2, the text that appears in the boxes is  
20 typically one word, either "Same" or "4 cubic feet,"  
21 but you actually have the Energy Star symbol  
22 depicted under Washing Machine A.

23          A           Uh-huh.

24          Q           Why did you choose to include the  
25 symbol there instead of, say, yes, no?

1           A           I could have done anything I wanted.  
2           This was the best way, in my view, because this is  
3           the actual label that is affixed to the actual  
4           Maytag Centennial washing machines.

5           Q           And you had shown them the label  
6           previously in the survey, had you not?

7           A           I had.

8           Q           So did you feel that it was necessary  
9           to show them the label again?

10          A           "Necessary" is a strong word. I think  
11          it makes the survey better.

12          Q           How does it make it better to show the  
13          label instead of including text in the box that says  
14          "Yes" or "Present"?

15          A           This is instantly clear to the  
16          respondents. This is the most clear possible  
17          presentation of the information in a contingent  
18          valuation survey. The Energy Star label is clearly  
19          recognized, whereas a "Yes" versus "No" would take  
20          more cognitive effort on the part of the respondent.

21          Q           Do you think by including the Energy  
22          Star symbol instead of "Yes" versus "No," you could  
23          have influenced the selection of Washing Machine A  
24          over Washing Machine B?

25          A           No. I actually replicated what the

1 actual shopping experience is for respondents. They  
2 see a washing machine in real life that has this  
3 exact same logo on it, so I did the same thing for  
4 my survey.

5 Q Well, they see other things other than  
6 the washing machine with that logo on it, right?

7 A However, the purpose of this entire  
8 project is about this logo. It's about this label.

9 So isolating the value of the  
10 Energy Star label is the primary research objective  
11 for the entire study.

12 Q And you chose the gray background of  
13 the Energy Star label that you showed them?

14 A I did.

15 Q You're aware that there is a color  
16 Energy Star as well?

17 A I am aware of that.

18 Q Why did you choose the gray over the  
19 color?

20 A As I answered in response to one of  
21 your previous questions, I'm using the logo that  
22 appears on the actual machine itself. So to be more  
23 specific, I'm talking about the control panel of the  
24 Maytag Centennial washing machine.

25 Q Is that -- is it your understanding

1 that's the only place the Energy Star logo was  
2 displayed on the machine?

3 A No.

4 Q So is there some reason you chose the  
5 gray as opposed to the color version of the  
6 Energy Star label?

7 A I thought this was -- I thought this  
8 was a good choice. I could have chosen the black  
9 one. I could have chosen one that perhaps mimics  
10 the 3-inch clings that I read about.

11 But this is the actual image that is  
12 affixed to the actual machine itself, so it's not a  
13 sticker. It's not a cling. It's actually embossed  
14 there on the control panel. It strikes me that's  
15 the durable, fixed application of the Energy Star  
16 label on that washing machine.

17 Q You referred to the -- I think you said  
18 "the black one."

19 What did you mean by that?

20 A I'm referring to the energy guide, the  
21 way that it looks on the energy guide.

22 Q The way the Energy Star logo looks on  
23 the energy guide label?

24 A That's correct.

25 Q So is it your testimony that you

1 considered using the energy guide, the Energy Star  
2 logo that appears on the energy guide label, but  
3 chose this version of the logo instead?

4 A Yes. I think this is the better  
5 choice, so I chose that one.

6 Q Why is that the better choice?

7 A I just explained to you --

8 MR. MARCHESE: Asked and answered.

9 BY MR. BELLAMY:

10 Q I'm asking between those two specific  
11 choices.

12 A I'll just repeat. This is the actual  
13 Energy Star label that's affixed to the actual  
14 machine. It's not a sticker. It's not a peel-away.  
15 It's actually on the machine.

16 And therefore, this strikes me as a  
17 noncontroversial, clean label to use. This is --  
18 Maytag made the choice of putting this label on the  
19 machine, so I used it in my survey.

20 Q And is it your understanding that the  
21 energy guide label needs to be affixed to every  
22 machine as well?

23 A That is my understanding, but it's not  
24 affixed in the same way that this is.

25 Q But at the point of sale, consumers

1 would have seen or been exposed to the Energy Star  
2 label that appears on the energy guide label?

3 A My understanding is the energy guide is  
4 affixed to all of these machines as well.

5 Q And the energy guide label includes  
6 information beyond just the Energy Star logo, right?

7 A It includes other information.

8 Q And you chose not to show the version  
9 of the Energy Star logo that included specific  
10 information about, say, the annual kilowatt hours  
11 used?

12 MR. MARCHESE: Objection.

13 THE WITNESS: I explained during our  
14 first hour today that I did not do that.

15 BY MR. BELLAMY:

16 Q Looking at page 13 of Exhibit E --  
17 sorry, Exhibit 2 -- it says -- and this, I assume,  
18 would be on the screen that the respondent read.

19 It says, "You said that you would  
20 prefer to purchase the washing machine, either A or  
21 B, the one with the Energy Star label. You said you  
22 would be willing to pay \$400, not including taxes."

23 In what sense are you using the phrase  
24 "willing to pay" there?

25 A I'm using it as a restatement of the

1 respondent's vote in the previous question where  
2 they selected the 400-dollar-priced machine with the  
3 Energy Star label.

4 Q But they had no choice but to select  
5 the 400-dollar price, right?

6 A The question speaks for itself. This  
7 is a contingent valuation survey. We're asking  
8 them, are they going to vote for Washing Machine A  
9 or Washing Machine B.

10 So by intentional design, I've given  
11 them a price point that matches up with the market  
12 reality from 2009 to 2012 using the actual  
13 transaction data from that time period.

14 MR. BELLAMY: I'm going to move to  
15 strike as nonresponsive.

16 MR. MARCHESE: You know, you keep  
17 saying that --

18 MR. BELLAMY: I do, yes.

19 MR. MARCHESE: -- and the witness has  
20 said, you know, every time that you move to  
21 strike as nonresponsive that he's trying to  
22 answer your questions in a responsive manner.

23 And if you're not getting the answers  
24 that you or maybe your client wants, I mean,  
25 you don't get to circumscribe and dictate his



1 testimony by making useless motions on the  
2 record. I mean, his testimony is his  
3 testimony.

4 MR. BELLAMY: Do you understand how a  
5 motion to strike works in a deposition?  
6 Because it's no more useless than you making  
7 an objection. It's for the record. So if I  
8 have to go back to the judge and say, "This  
9 witness was not giving me responsive answers,  
10 and I moved appropriately," here's the record.  
11 That's why I'm doing it.

12 He has the option, the witness does, of  
13 saying "Maybe that wasn't responsive" or "I'm  
14 sticking to it," just like I have a choice  
15 whether your objection has merit or not.

16 That's how depositions work.

17 BY MR. BELLAMY:

18 Q So the question was: Did respondents  
19 in response to the question on page 12 have the  
20 choice to say "No" to Washing Machine A or Washing  
21 Machine B?

22 A The question speaks for itself.

23 Q It's a yes-or-no question?

24 A They had the option to skip the  
25 question, but I'm giving them the choice of two

1 different machines with the same price. So I'm  
2 asking them to vote on one of those two.

3 Q You gave them a choice between paying  
4 \$400 or \$400; is that right?

5 A Well, the machines are different. One  
6 has the Energy Star label; the other one does not.

7 Q But you gave them a choice in terms of  
8 price of paying \$400 or \$400, correct?

9 A That's by design.

10 Q And how does choosing the \$400 under  
11 that circumstance signal their willingness to pay  
12 \$400?

13 A Signal their willingness to pay \$400?

14 MR. MARCHESE: Objection to form.

15 THE WITNESS: This is a contingent  
16 valuation survey. I am measuring the price  
17 premium paid by these consumers and examining  
18 what value they place on the Energy Star  
19 label.

20 The way to actually design a contingent  
21 valuation survey is to start with a vote  
22 question like this so that I can decide -- or  
23 literally the computer is deciding for me --  
24 which logical questions they should receive  
25 next.

1                   So that's why the survey is set up like  
2                   this.

3       BY MR. BELLAMY:

4           Q       The terminology you use on page 13 is  
5       you said you would be willing to pay \$400.

6                   And my question is: How does choosing  
7       Washing Machine A for 400 or Washing Machine B for  
8       400 signal their willingness to pay 400?

9                   They had no choice, did they?

10                  MR. MARCHESE: Objection.

11                  THE WITNESS: Of course they had a  
12       choice. They had a choice between two  
13       different washing machines.

14       BY MR. BELLAMY:

15           Q       They had no choice as it pertains to  
16       price.

17           A       There's some 6,000 articles and  
18       publications using the contingent valuation approach  
19       in the peer-reviewed literature. There are based on  
20       this proven method of starting with a referendum or  
21       vote question so that the respondent will work from  
22       there to allow someone like myself to actually  
23       measure their valuation or eliciting what price and  
24       how much value they place on each particular  
25       feature. So this is not just my design. This is

1 based on existing literature that goes back 30 or  
2 40 years.

3 Q Did your survey establish that the  
4 respondents, in fact, were willing to pay \$400 for  
5 either of these machines?

6 A Is your question about their personal  
7 willingness?

8 Q Correct.

9 MR. MARCHESE: Objection to form.

10 THE WITNESS: This survey makes no  
11 assumptions, and it's not asking the  
12 respondent to use their personal money to  
13 purchase anything.

14 BY MR. BELLAMY:

15 Q If you could turn back in your report  
16 to Paragraph 18.

17 The second sentence of Paragraph 18,  
18 you refer to a "price discount."

19 Is price discount the inverse of price  
20 premium there as you intended?

21 A Allow me to catch up with you, sir.

22 Q Please. Please.

23 A I think this answers your question.

24 Prime discount -- excuse me, the  
25 discount that I'm measuring and the price premium

1 paid are equivalent concepts.

2 Q Okay. If you look at Paragraph 20,  
3 there's a discussion of randomizing the discount  
4 offered between \$100 and \$50 off of the \$400 retail  
5 price.

6 Do you see that?

7 A Yes, I do.

8 Q And you said you randomized the choice  
9 between 300 and \$350?

10 A I did.

11 Q And what do mean by that?

12 A I mean exactly what it says here. The  
13 questionnaire randomly assigns a value of \$300 or  
14 \$350 in the first follow-up question asked after the  
15 referendum question.

16 Q And how did you select 300 and \$350 as  
17 opposed to some other number like 350 and 375?

18 A My past experience. My past experience  
19 indicated that would be a good place to start.

20 I also had a pretest that I did using  
21 this approach. And in the pretest, I did  
22 qualitative interviews with respondents asking if  
23 they understood this survey exercise, particularly  
24 these choice questions.

25 So I could have used other points. I

1 could have used 250. I could have used 200.

2 What I did was, I think, a fairly  
3 conservative approach here. I chose relatively  
4 small discounts of 350 and 300 for the starting  
5 point.

6 Q You said based on your experience, in  
7 part at least, you chose these numbers.

8 What specifically about your experience  
9 caused you to choose a 100-dollar and a 50-dollar  
10 discount as a starting point for this question?

11 A My experience in conducting other  
12 contingent valuation surveys.

13 Q For comparable products, comparably  
14 priced products?

15 What specific experience are you  
16 referring to?

17 A Well, for instance, the research that I  
18 did in the Kangadis case, I would have to look back  
19 at the Ebot and Kangadis case to see exactly how I  
20 designed that for a comparable. I have not looked  
21 at my report in that case for a long time, so I need  
22 to refresh my memory.

23 There is a case that we've had some  
24 dialogue about today that's under wrap and seal, and  
25 I'm not able to talk about that one openly today.

1 I've also done continuing evaluation  
2 surveys on other matters related to tobacco  
3 products.

4 Q And remind me if you conduct contingent  
5 valuations for products outside the context of  
6 litigation.

7 A Contingent valuation projects?

8 Q On products, products like the kind of  
9 products at issue here as opposed to public goods.

10 A I just need to be more specific with  
11 the question.

12 Are you referring to past studies I've  
13 done on things like washing machines and domestic  
14 appliances?

15 Q Correct.

16 A I think I answered before, and I still  
17 cannot recollect any other surveys besides the ones  
18 I've mentioned so far today.

19 Q In Footnote 2 on page 13 of your  
20 report, you refer to "starting point bias as a  
21 possible source of error."

22 What do you mean by "error" in that  
23 sentence?

24 A Error as opposed to truth. The idea of  
25 doing a survey like this one is to have a valid and

1 accurate survey estimate. So when we think back to  
2 our prior conversation today about what  
3 "reliability" means, I'm referring to the accuracy  
4 measure. So any deviation from accuracy is error.

5 Q It looks like Paragraph 20 continues  
6 onto page 13, and there's a reference to the fact  
7 that "Respondents were given the opportunity to  
8 select 'Don't know' or 'Not sure' when presented  
9 with the store manager's initial discount off the  
10 400-dollar price."

11 Is that right?

12 A That's correct.

13 Q And is that the only question in the  
14 survey they were presented a "Don't know," "Not  
15 sure" option for?

16 A Yes. This is an important question and  
17 in my view was an appropriate instance where an "I  
18 don't know" option made sense.

19 Q And if a respondent marked "Don't know"  
20 or "Not sure," were they excluded from the rest of  
21 the survey?

22 A I think I still asked the demographic  
23 questions, but they were excluded from the rest of  
24 the contingent valuation questions.

25 Q And what reasons would a -- in the



1 field of contingent valuation, how are "Don't know,"  
2 "Not sure" answers treated?

3 Are they more like a no, are they more  
4 like a yes, or are they something else entirely?

5 A I think that it's possible that  
6 different practitioners have different points of  
7 view on that. I know there are practitioners that  
8 do what I do where we have missing data here. We  
9 don't know what their preference is, for  
10 Washing Machine A or B, and the balanced solution,  
11 in my view, is to not make any assumptions about  
12 whether they would have voted for Washing Machine A  
13 or B.

14 We know already that they've told us  
15 that \$400 is a price, and they voted for that  
16 400-dollar price previously for the Energy Star, but  
17 we don't have a response here.

18 So I am reluctant to make up a number  
19 and make an assumption about how much they're  
20 willing to pay for the washing machine without the  
21 Energy Star label.

22 Q You reference that -- you made a  
23 reference to "other practitioners."

24 Is there another option for treating  
25 "Don't know," "Not sure" answers?

1           A           I'm sure there are. I'm sure some  
2 experts would attempt to replace the missing data  
3 with a variety of techniques that could be used, and  
4 there's too many techniques to enumerate. There's a  
5 lot of ways to treat missing data in surveys.

6           Q           There's a terminology question I have.

7                       On the bottom of page 14 of your  
8 report, Paragraph 21, you say, "By answering this  
9 question, the survey captured the diminution in  
10 value for the washing machine without the Energy  
11 Star label."

12                      Again, is diminution in value  
13 equivalent to price premium here?

14           A           It's the first step toward measuring  
15 price premium. When the respondent answers this  
16 particular question, at this point in time, we only  
17 have one price point from the respondent. So there  
18 are more follow-up questions to arrive at a more  
19 specific price point.

20           Q           If you could turn to page 15 of  
21 Exhibit 2, which is your Attachment E.

22           A           Are we back on this area of  
23 questioning?

24           Q           Your Attachment E, which is Exhibit 2,  
25 so, yeah, "Survey questionnaire from the main

1 study."

2 A I was looking at Exhibit 6, excuse me.

3 What page?

4 Q Page 15.

5 So if a respondent had indicated that  
6 they would pay \$300 for the washing machine without  
7 Energy Star when the Energy Star washer was  
8 available for 400, it then asks them the highest  
9 price they would pay above 300; is that correct?

10 A Yes.

11 Q And you list those prices in increments  
12 of \$10?

13 A I did.

14 Q Was that a purposeful choice, 10-dollar  
15 increments?

16 A Yes, it was. Everything I do in my  
17 surveys is purposeful.

18 Q Why 10-dollar increments?

19 A To me, these are round numbers. It's  
20 also going to give the economists fairly specific  
21 information to work with at the end of the day  
22 because all these numbers get generated into and  
23 boil down into a discount number or price premium  
24 paid. So this struck me as an appropriate level of  
25 specificity that the respondents would be able to

1 answer to.

2 Q And were they -- they're presented in  
3 this question from \$300 in ascending order up to  
4 \$400?

5 A That's correct.

6 Q Were they always presented from lowest  
7 to highest in this manner?

8 A They were.

9 Q I'm sorry, did you say they were?

10 A They were.

11 Q Did you consider randomizing the  
12 presentation of values?

13 A No. I think that would be confusing to  
14 the respondent.

15 Q Do you consider starting with the  
16 highest number and ending with the lowest number?

17 A I think that's what I just answered, or  
18 maybe you asked me a different question.

19 Q I said lowest to highest, from 300 to  
20 400.

21 Did you consider 400 to 300?

22 A That's what I thought you asked me.

23 Q Randomized in no particular number,  
24 300, 350, 400, random?

25 A No. I never would consider that.

1           Q           Your answer before, you did not  
2           consider organizing them from highest to lowest  
3           because I missed it, sorry?

4           A           I think that would be confusing to the  
5           respondents.

6           Q           If you turn to page 16, it is sort of  
7           the inverse of the last question, and it starts "Not  
8           willing to buy at any price" and goes up to \$300.  
9           This one moves in 25-dollar increments.

10                   Is there a reason why you selected 25  
11           here and 10 in the prior question?

12           A           Yes, there is.

13           Q           What is that?

14           A           I wanted to strike a balance. I wanted  
15           to get relatively specific information, but my  
16           concern was that it would be counterproductive and  
17           have the response list be too long. So potentially,  
18           I could have used 10-dollar increments again all the  
19           way from not willing to buy at any price up to the  
20           \$300 amount, but in my view, the response list was  
21           going to be difficult to view by the respondent.  
22           And that's why I used the 25-dollar increments, and  
23           also I provided this other amount option as well.

24           Q           And similar to the question I asked on  
25           the last question, were they always organized

1 starting from "Not willing to buy at any price" and  
2 then increasing up to \$300?

3 A That's correct.

4 Q What sources of information would a  
5 consumer shopping for a new washing machine have  
6 access to in the real world?

7 MR. MARCHESE: Can you read that back?  
8 I'm sorry.

9 (At which time the following question  
10 was read back by the reporter:

11 "QUESTION: What sources of information  
12 would a consumer shopping for a new washing  
13 machine have access to in the real world?")

14 MR. MARCHESE: Objection, lacks  
15 foundation.

16 THE WITNESS: All depending upon how  
17 enterprising and literate, energetic they are;  
18 whether they have Internet access or don't  
19 have Internet access. There's a lot of  
20 variables in play. They could look at buying  
21 guides. They could do online research. They  
22 can go to stores and read any sales collateral  
23 that's available. They can talk to sales  
24 personnel at these various retail outlets.  
25 They could do a lot of things.

1 BY MR. BELLAMY:

2 Q What is the difference between a  
3 "public good" and a "private good"?

4 A A private good versus public good --  
5 public goods are defined by not being privately  
6 owned. Private goods are defined by not being  
7 publicly owned. A public good is a shared good  
8 across a community or some kind of activity.

9 Q And was contingent valuation originally  
10 developed to value public goods or private goods?

11 A The initial impetus when it was  
12 designed was for measuring the nonmarket public  
13 goods. It's since became more widely used for  
14 private goods.

15 Q Do contingent valuation surveys  
16 identify factors that might influence the price at  
17 which sellers would be willing to sell a given  
18 product?

19 A Could I trouble you to repeat the  
20 question?

21 Q Do contingent valuation surveys seek to  
22 evaluate factors that might influence the price at  
23 which sellers might be willing to sell a given  
24 product?

25 MR. MARCHESE: Object to the form.

1 THE WITNESS: Your question is about  
2 the willingness of sellers?

3 BY MR. BELLAMY:

4 Q Correct, and whether it's accounted for  
5 in contingent valuation surveys.

6 A It can be accounted for. In my  
7 particular survey, it was. It is possible to design  
8 a survey to take into account seller factors.

9 Q And I believe we talked about this  
10 earlier. You testified that you took into account  
11 sellers by looking at the retail prices of the  
12 Maytag washers at issue?

13 A I did. I provided a response or talked  
14 on this point earlier today about how the retail  
15 transaction data that I looked at from -- I believe  
16 I listed four sources earlier today, including  
17 Sears, Lowe's, Fry's, and Home Depot in looking at  
18 this 2009 to 2012 period so that I could have real  
19 transaction data to use as the basis for my survey  
20 questionnaire.

21 Q And did you consider any supply side  
22 data other than those retail prices?

23 A Well, those data in the retail sales  
24 transaction data, they incorporate and include many  
25 different factors on the supply side. So in my



1 view, it was unnecessary to look at additional  
2 information on the supply side because those  
3 transaction prices reflect real market transactions  
4 that occurred between consumers and sellers.

5 Q And are those transactions, real market  
6 transactions, particularly reliable?

7 A In my professional opinion, those are  
8 reliable data that I examined. I did -- I have no  
9 reason to suspect that those transaction data are  
10 not reliable.

11 Q Are you aware of any attempts to  
12 validate willingness to pay as measured by  
13 contingent valuation against actual marketplace  
14 behavior?

15 A Well, just to clarify, my survey was  
16 about measuring the price premium paid. And so with  
17 respect to the price premium paid studies which, you  
18 know, are distinguished by the supply side factors  
19 and taking those into account with the transaction  
20 data that I've been talking about today, there's a  
21 validation exercise within the price premium studies  
22 to the extent that the reliability of those studies  
23 is increased by using real market transaction data.

24 To answer your question more directly,  
25 there is a literature that looks at contingent

1 valuation studies. I know Richard Carson has done a  
2 review of a variety of contingent valuation studies,  
3 examining them for reliability and accuracy.

4 Q And were these contingent valuation  
5 studies conducted with respect to private market  
6 goods?

7 A I would have to look at his article to  
8 answer that.

9 Q Other than that specific article, are  
10 you aware of any other studies that attempt to  
11 validate contingent valuation studies of private  
12 market goods?

13 A Other than the Richard Carson article?

14 Q Correct.

15 A To be clear, the Richard Carson article  
16 is a summary of existing literature, so it's a  
17 review of many studies on this point.

18 Other than the Richard Carson article,  
19 I can't think of any others at the moment.

20 Q Have you heard the criticism of  
21 contingent valuation that it's not incentive  
22 compatible?

23 A I have.

24 Q What do you understand that criticism  
25 to mean?

1           A           I think this is sometimes called "the  
2   thousand leg problem" where respondents potentially  
3   are not sensitive to the scope of the public good  
4   that's being -- or the nonmarket good that is the  
5   subject of the survey.

6                   And the criticism would be that  
7   respondents have difficulty discriminating between  
8   the value they have on, let's say, one clean lake  
9   versus having a thousand clean lakes. So there's  
10   that insensitivity to scope that critics talk about.

11           Q           Are you aware or have you heard of the  
12   criticism that contingent valuation has an upward  
13   bias?

14           A           Yes, there are critics of contingent  
15   valuation. I think I put it in my report that the  
16   criticisms of contingent valuation tend to be in the  
17   natural resources damage assessment area. These are  
18   two of the main criticisms that are made for these  
19   kinds of research studies that are looking at how  
20   much people value environmental protection.

21                   My study, of course, is not about  
22   environmental protection; it's about a good that  
23   people actually purchased.

24           Q           Are you familiar with framing effects?

25           A           I am.

1 Q And what are "framing effects"?

2 A I'm assuming for purposes of your  
3 question that you're talking about the information  
4 that's provided to the respondents; for instance, in  
5 the information provision sections of the survey.  
6 They might unduly be limiting their options or  
7 priming them in different ways with the concepts  
8 that are used in the survey.

9 Q Do you think you may have received  
10 different responses to the survey if you had asked  
11 people how much more they would be willing to pay  
12 for Energy Star as opposed to how much less they  
13 would be willing to pay for non-Energy Star?

14 MR. MARCHESE: Objection, lacks  
15 foundation.

16 THE WITNESS: It's not something I  
17 thought about. I would have to research that  
18 to have a more informed answer. As I sit here  
19 today, don't see how that would improve my  
20 study. I used the real market transaction  
21 data in my survey for the 400-dollar price  
22 point and attempted to anchor my survey in  
23 that market reality.

24 I would have to think about how that  
25 interacts with this idea of measuring how much

1 more people would pay. I guess it doesn't  
2 make much sense to me on the face of it, how I  
3 would go about -- or why that would make sense  
4 to use it in my survey approach because I know  
5 how much people paid on average for these  
6 products with the Energy Star label, so why  
7 would I ask them how much more they would be  
8 willing to pay?

9 I don't see how that would even work.

10 BY MR. BELLAMY:

11 Q Are you familiar with endowment  
12 effects?

13 A Yes.

14 Q And what are endowment effects?

15 A That might be the same thing as looking  
16 at status quo bias and looking at the fact that  
17 there's a conservative tendency in people to value  
18 what they have.

19 There's an endowment effect from  
20 valuing what you know and what you potentially have  
21 already. That's what I understand.

22 Q So here, you initially gave your  
23 hypothetical purchasers Energy Star and then asked  
24 them how much less they would pay for non-Energy  
25 Star?

1           A           No. In fairness, I gave them a choice  
2 between two products: With and without the Energy  
3 Star.

4           Q           In identifying the price less they  
5 would pay than 400, they started out with  
6 Energy Star, yes?

7           A           My survey starts with a referendum  
8 question that treats the Washing Machine A and B as  
9 having the same price, and they're exactly the same  
10 in every respect except for the Energy Star feature.

11          Q           Why did you use contingent valuation to  
12 identify the price premium in this case rather than  
13 actual market prices?

14                   MR. MARCHESE: Objection to form.

15                   THE WITNESS: As far as I know, well,  
16 number one, I'm not an economist. I'm not  
17 skilled to use market transaction data to  
18 simulate that. I'm an expert in contingent  
19 valuation surveys.

20                   Counsel asked me to conduct a price  
21 premium study, and independently it's my  
22 conclusion, and counsel shared it, that a  
23 contingent valuation approach would be useful  
24 for me to conduct.

25

1 BY MR. BELLAMY:

2 Q Did you initially assess whether or not  
3 actual market prices existed for the non-Energy Star  
4 version of the Maytag Centennial washer?

5 A I know we talked about this some  
6 earlier today. I did not make that a priority. I  
7 was assigned and asked to look at the price premium  
8 paid for these particular Maytag Centennial washing  
9 machines, and that's what I did.

10 Q I understand that some contingent  
11 valuation surveys include so-called "attitude  
12 questions."

13 Are you familiar with that phrase?

14 A I think I know what you're talking  
15 about.

16 Q So, for example, whether a consumer  
17 considers themselves an environmentalist, for  
18 example?

19 A Yes. I'm aware of the kind of question  
20 you're talking about.

21 Q Did you consider including attitude  
22 questions of that sort in this survey?

23 A I did not.

24 Q Would you expect that somebody who is  
25 self-identified as an environmentalist might place a

1 higher price premium on the Energy Star logo than  
2 someone who did not?

3 MR. MARCHESE: Objection, lacks  
4 foundation.

5 THE WITNESS: It's always possible. I  
6 talked earlier today about what the literature  
7 says on this point; that we know that some  
8 consumers get a nonmonetary benefit from the  
9 Energy Star label. They perceive they're  
10 doing something good for the environment.

11 BY MR. BELLAMY:

12 Q Do you mean to suggest that that  
13 nonmonetary benefit is on top of a monetary benefit?  
14 In other words, they value it more than somebody who  
15 is not receiving that nonmonetary benefit?

16 MR. MARCHESE: Objection to form.

17 THE WITNESS: I'm not making any  
18 commentary or opinion on that point.

19 BY MR. BELLAMY:

20 Q I asked you a question related to this  
21 before, but it's slightly different.

22 Outside the context of litigation, have  
23 you ever conducted a contingent valuation survey to  
24 identify the price premium associated with any  
25 specific feature or attribute of a private good?



1           A           Allow me to think for a minute, please.  
2           I can't think of any involving private goods.

3           Q           What does the phrase "revealed  
4           preference" refer to?

5           A           "Revealed preference" typically refers  
6           to consumers' preferences as revealed by their  
7           market transactions.

8           Q           And how are those preferences revealed  
9           in a market transaction?

10          A           Through their purchasing behavior.

11          Q           Does that mean how much they're willing  
12          to pay?

13          A           It means their purchasing behavior,  
14          their actual behavior.

15          Q           So what does behavior capture there?

16          A           Purchasing behavior.

17          Q           You're going to have to define that  
18          further.

19          A           So you go to the grocery store, and you  
20          potentially make purchases. You buy a bunch of  
21          things, and you pay money for those things. Your  
22          preferences for what you value in that store are  
23          revealed through the purchases you made and the  
24          money that you spent on those goods.

25          Q           If you could turn to page 26 of your

1 report, please.

2 Beginning at Paragraph 40, you begin to  
3 discuss the pretest survey.

4 Do you see that?

5 A Yes, I do.

6 Q And it says, "After designing the  
7 contingent valuation survey questionnaire, I  
8 rigorously pretested the survey."

9 I just want to make sure that was an  
10 intentional order there. You designed the  
11 contingent valuation survey and then pretested it;  
12 is that right?

13 A That's correct.

14 Q And did you change any of the questions  
15 in the contingent valuation survey based on the  
16 results of your pretest?

17 A My report list changes.

18 In Exhibit 2, the first page of  
19 Attachment E, I list my changes there that I made as  
20 a result of the pretest.

21 Q And so what was the initial design of  
22 the survey before you had pretested it based on?

23 A It was based on the questionnaire I  
24 drafted.

25 Q Is the questionnaire the pretest

1 survey?

2 A Maybe I misunderstood your question.

3 I designed a pretest survey  
4 questionnaire. Then I pretested that survey  
5 questionnaire. I made the changes that are listed  
6 at the top of Attachment E, and then I conducted the  
7 main study.

8 Q You state in the second sentence of  
9 Paragraph 40 that "The purpose of the pretest is to  
10 assure that the survey questionnaire is programmed  
11 correctly for the online survey and to identify any  
12 questionnaire improvements based on feedback from  
13 the respondents and analysis of the pretest  
14 interview data."

15 What would signal a need for question  
16 improvements?

17 A A couple of things come to mind at  
18 least. One is that in doing my qualitative  
19 interviews with the respondents, if I heard  
20 respondents tell me that the survey is confusing,  
21 that they could not answer some of the questions  
22 because their response options are not complete, or  
23 they have a variety of other observations about the  
24 survey, then I would certainly consider that  
25 information.

1 I would also consider information if,  
2 for instance, I found questionnaire programming  
3 errors, just simple operational or logistic errors  
4 that are in that pretest survey questionnaire, that  
5 would certainly give me pause.

6 I found a typo. I think I listed it in  
7 Attachment E.

8 As a result of my pretest survey, they  
9 gave me a chance to go through the questionnaire  
10 again and identify any errors.

11 Q And you refer in Paragraph 40 in the  
12 sentence I was just referring to, "feedback from the  
13 respondents."

14 In what form did you receive that  
15 feedback?

16 A Through the telephone calls I had with  
17 the respondents.

18 Q Other than those telephone calls, was  
19 there any way for the pretest survey participants to  
20 provide you feedback?

21 A No. That was -- well, in terms of  
22 actual communications, that was the only way, was  
23 through the 10 telephone qualitative sessions I had  
24 with these respondents.

25 Q There's a reference in the

1 second-to-last sentence of Paragraph 20 to "pretest  
2 interviews that were collected between October 26  
3 and October 28."

4 What does that refer to?

5 A It refers to the pretest in  
6 Paragraph 40, I believe you're referencing, that I  
7 conducted of 200 interviews. And the dates that you  
8 see there were the dates where I collected these  
9 actual interviews.

10 Q And so -- just so I understand the  
11 nomenclature, the "interviews" are the pretest  
12 survey responses?

13 A It is confusing. Some people -- within  
14 my industry, we equate interviews with actual  
15 completed survey responses. We'll use those two  
16 words interchangeably.

17 Q Paragraph 41 describes the 10  
18 interviews that you referred to a moment ago.

19 Why did you choose the number 10?

20 A I did not choose the number 10. I  
21 wanted to do as many as I could in the time that I  
22 had allowed. Sometimes I do just six, seven or  
23 eight, but I try to get somewhere between six and  
24 ten of these done.

25 Q Were the ten randomly selected, or were

1     there specific demographic criteria you were looking  
2     to have represented in those ten?

3             A           These were not randomly selected. This  
4     is from among the pool of people who provided  
5     consent in the survey to allow me to call them and  
6     consent to provide the researcher directing the  
7     study with their personal identifying information.

8             So I called all the cases that were  
9     part of that group that consented in, and these are  
10    the 10 that cooperated with me and were available  
11    for me.

12            Q           Other than the 10 who provided consent,  
13    was there any criteria for selecting those 10 to  
14    speak to?

15            A           No.

16            Q           So in conducting these 10 pretest  
17    interviews, did you start with an open-ended  
18    question?

19                        Did you ask them to identify anything  
20    that was confusing or unclear?

21            A           That's -- that's basically what I did.

22            Q           Walk me through a generic example of  
23    one of these.

24                        Is there a script that you follow, a  
25    set of questions?

1           A           My attachment, I believe, is in this  
2   report.

3           Q           Are you referring to your notes?

4           A           Yes. Attachment D has the structure.

5                       (Letter dated 5/15/09 to Sales

6   Development Managers/Sales Market

7   Representatives Retail from Andy Sinclair,

8   WDZ0014657, was marked Dennis-5 for

9   identification.)

10   BY MR. BELLAMY:

11           Q           You've been handed what's been marked  
12   for this deposition as Exhibit 5.

13                       This is the Attachment D you were just  
14   referring to?

15           A           It is.

16           Q           And you said it has the "structure."

17                       You're referring to the structure of  
18   the interview?

19           A           I was.

20           Q           And how does it have the structure of  
21   the interview?

22           A           It has my generic section where I'm  
23   asking the respondent to tell me what they thought  
24   about the survey -- were there any questions that  
25   were unclear, what do you remember from the

1 survey -- and get them to talk about the survey and  
2 then ultimately help -- encourage them to talk about  
3 what they understood the survey questions to mean  
4 and what was their thought process when they  
5 answered the contingent valuation questions.

6 And then the right side of the table  
7 there has my documentation that I asked the  
8 respondents for their guess who they think is  
9 actually paying for this survey.

10 Q So you noted a bunch of questions, the  
11 last one of which is reflected in a separate column:  
12 "Who paid for the survey?"

13 The other questions don't appear on  
14 this document.

15 Was there a set script of questions  
16 that you were asking respondents?

17 A No.

18 Q Is Attachment D, does that represent  
19 all of the notes of your communications with these  
20 10 respondents?

21 A It does.

22 Q Were these conversations recorded in  
23 any way?

24 A No.

25 Q Why is the one question, "Who paid for



1 this survey," why is that the only question that's  
2 separately broken out?

3 A No particular reason.

4 Q And what was the point of asking that  
5 question in particular?

6 A A research objective for any researcher  
7 like myself who is trying to do good work is to see  
8 if the survey is perceived to be biased or in some  
9 way favoring any other organization.

10 I like to ask this question in my  
11 surveys to get the respondents to give me their best  
12 guess. If they all were to make a guess of one way  
13 or the other, you know, they all said, you know, we  
14 think it's -- it doesn't really matter -- but if  
15 they were all to guess the same funder, then I  
16 perhaps have a problem with my questionnaire.

17 Q So if they all guessed the same funder,  
18 that could be a problem, but it wouldn't necessarily  
19 mean they were right about who that funder was?

20 A I would take everything under  
21 consideration in what they provide there. The  
22 best-case scenario is that they don't have a solid  
23 opinion about who funded the survey, and that's  
24 where most of the respondents were on this. They  
25 had difficulty even thinking about who possibly

1 could be funding it.

2 Q So the notes, the middle column on  
3 Exhibit 5, the Attachment D, are these all you  
4 recall about these conversations, or do you have a  
5 separate, independent recollection of them?

6 A In my report, I explained that these  
7 are my notes as I typed into my computer as I  
8 actually had conversations with people.

9 Q And is your recollection limited to  
10 these notes, or do you have an independent  
11 recollection of the interviews?

12 A I think this is probably going to be my  
13 best recall at this point, is relying on these  
14 notes. So the answer to your question -- it's hard  
15 for me to answer my question whether I have  
16 independent recall. This is my best document that I  
17 have to refer to.

18 Q Are you able to match up these 10  
19 individuals with their actual survey responses?

20 A Yes.

21 Q Have you done that in this report?

22 A I have not done it in the report.

23 Q How would we -- how would I be able to  
24 figure that out myself?

25 A You would not be able to.

1           Q           I mean, could you provide the  
2           information now or separately through your lawyer if  
3           there's a way for me to match up their survey  
4           responses?

5           A           It's not feasible to do it now. If  
6           asked to do so, I will comply with their requests if  
7           counsel asks me to do it.

8           Q           You mean it's not feasible to do it as  
9           we sit in the deposition.

10                    Did you have their survey responses in  
11           front of you when you talked to them?

12           A           I did.

13           Q           If you turn to page 2 of Exhibit 5, the  
14           notes of your conversation with Herb, "He stated his  
15           belief that an ES" -- I assume that means Energy  
16           Star -- "washing machine would have better  
17           technology and be better in other ways that I did  
18           not describe in my survey and that 'Energy Star'  
19           means to him that it's just a better washing  
20           machine."

21                    Do you recall that conversation?

22           A           I do.

23           Q           Did it strike you that his  
24           understanding of Energy Star was inaccurate?

25           A           I'm not passing judgment on the

1 understanding of all the respondents. I'm measuring  
2 their preferences with respect to the Energy Star  
3 logo.

4 Q And did it concern you at all for  
5 purposes of your pretest analysis that Herb did not  
6 appear to have an accurate understanding of what  
7 Energy Star was?

8 MR. MARCHESE: Objection to form.

9 THE WITNESS: Not in the slightest. In  
10 fact, I'm not sure he's having an inaccurate  
11 recollection. The consumer research market  
12 shows people have a very positive attitude  
13 towards the Energy Star mark. It goes beyond  
14 their belief of how much water they're saving.

15 BY MR. BELLAMY:

16 Q But to be clear, you don't know whether  
17 it's accurate or not whether he had an accurate  
18 understanding of Energy Star or not?

19 A It's not relevant for the purpose of my  
20 having a reliable and valid survey.

21 Q If you turn to the next page, the notes  
22 of your conversation with Linda M, "She said the  
23 Energy Star is important to her, but since the kids  
24 moved out, she doesn't do nearly as much laundry as  
25 she used to and doesn't expect to save much money

1 with an Energy Star washing machine."

2 Do you recall that conversation?

3 A I do.

4 Q Do you think it's reasonable to assume  
5 that she might have assigned a higher price premium  
6 when her kids were home and she was doing more  
7 laundry?

8 A It's possible. Her circumstances, as I  
9 described them here, have changed. Peoples'  
10 preferences could change.

11 Q Her preference for the Energy Star  
12 label could change with her circumstances?

13 A I think that's been previously  
14 established that my survey is not an  
15 individual-level measurement. The preferences, I'm  
16 doing a study that measures in the aggregate how  
17 much people value the Energy Star label.

18 MR. MARCHESE: Galen, whenever you're  
19 ready, I'd like to take a quick break.

20 MR. BELLAMY: Now is time.

21 VIDEO OPERATOR: Going off the record  
22 at 3:40 p.m.

23 (Brief recess.)

24 VIDEO OPERATOR: Going back on the  
25 record at approximately 3:53 p.m.

1 This is the beginning of File 7.

2 BY MR. BELLAMY:

3 Q Could you please turn to page 19 of  
4 your report?

5 A Sure.

6 Q The weighted mean in the chart on  
7 page 19 is 267.96; is that right?

8 A It is.

9 Q And using your own terminology, could  
10 you explain to me what that dollar amount  
11 represents?

12 A The \$276 [sic] represents the weighted  
13 average, the average valuation estimate, how much  
14 monetary value. It's going to take a second to  
15 explain if I could back up.

16 Paragraph 26 is about those consumers  
17 that initially stated a preference for the washing  
18 machine without the Energy Star label. And as  
19 previously described, there's 2 and a half percent  
20 of the respondents voted that way. And there were  
21 27 respondents after that that provided a monetary  
22 value of what they are willing to pay for the  
23 washing machine with the Energy Star logo, with the  
24 Energy Star label, and that average valuation is  
25 \$267 on a base of \$400.

1                   So if you take the \$400 and subtract  
2                   the \$267 into that \$400, that's where that discount  
3                   percentage average comes from, the 33 percent.

4                   Q           And were these individuals' willingness  
5                   to pay for a non-Energy Star washing machine, were  
6                   they taken into account in calculating the price  
7                   premium that you calculated here for the Energy Star  
8                   label?

9                   A           We covered this ground a little bit  
10                  earlier.

11                  Just a point of nomenclature, this is a  
12                  measurement of the price premium paid by those  
13                  consumers that initially voted for the non-Energy  
14                  Star washing machine as opposed to willingness to  
15                  pay measurement.

16                  This data that you see here on the  
17                  table on page 19 supports its own measurement of  
18                  valuation for this specific group of those  
19                  2 and a half percent that voted this way. Those  
20                  data are not to be combined with the 97.5 percent of  
21                  the consumers who voted for the Energy Star label.

22                  Q           I see. So based on however they voted  
23                  on the initial preference, you kept their data  
24                  separate going forward after that initial vote?

25                  A           I kept their valuation estimate

1 separate.

2 Q On page 18, the first row, the listed  
3 amount is zero dollars, and the column percent is  
4 22 percent.

5 Does this mean that 22 percent of the  
6 respondents said they would not purchase the  
7 non-Energy Star washing machine, even if it cost  
8 nothing?

9 A Not willing to buy at any price. And  
10 exactly, the same thing as a zero-dollar valuation.

11 Q And I guess you anticipated my next  
12 question. So is this the same thing as -- well, let  
13 me just ask: Is it fair to construe the 237  
14 respondents whose elicited amount was zero dollars  
15 to mean that they think the Energy Star logo alone  
16 was worth \$400?

17 MR. MARCHESE: Objection to form.

18 THE WITNESS: I apologize for asking  
19 you to do this at this hour, but could you  
20 please repeat that?

21 BY MR. BELLAMY:

22 Q If you were to focus just on that  
23 column with the 237 respondents whose elicited  
24 amount was zero, if it was just that column alone --  
25 or that row alone, would their price premium



1 associated with the Energy Star label be \$400?

2 A That is correct because that is the  
3 calculation.

4 However, I need to just state what I  
5 said earlier. This survey is not designed to  
6 support individual-level measurements of the value  
7 that consumers place on the Energy Star label. It's  
8 intended to be aggregated and calculated an average  
9 price premium paid.

10 Q So looking at this column, then, if an  
11 actual class member would be somebody who valued  
12 Energy Star at \$400, this price premium would not  
13 address that individual valuation?

14 A Maybe we're saying the same thing. All  
15 I'm saying is the survey was not designed to support  
16 individual measurements of the price premium paid.

17 Q Could you have designed the survey to  
18 measure individual price premiums associated with  
19 the Energy Star logo?

20 A I hadn't thought about it. The point  
21 is that the population is numerous. There's  
22 hundreds of thousands of class members. I can't  
23 even imagine what an individual-level assessment  
24 tool would look like for such a large and various  
25 class.

1           Q           If an individual class member were to  
2           say that the Energy Star label was worth a price  
3           premium of \$400, would you think that individual is  
4           entitled to \$400 in damages in this case?

5                   MR. MARCHESE: Objection, lacks  
6           foundation.

7                   THE WITNESS: It's not my assignment to  
8           provide legal opinions today on what the  
9           individual damage estimates should be for  
10          these class members.

11       BY MR. BELLAMY:

12          Q           Did you understand your assignment to  
13          be to calculate damages on behalf of the class?

14          A           On behalf of the class? I would say my  
15          job was to estimate reliably, accurately, the price  
16          premium paid for the Energy Star-labeled washing  
17          machines across the entire class.

18          Q           And your conclusion is that price  
19          premium was paid regardless of whether an individual  
20          valued the Energy Star label on their washer in any  
21          specific amount or degree?

22          A           I'm sorry, I didn't follow your  
23          question exactly.

24          Q           Is it your view that the price premium  
25          you identified was paid by class members regardless

1 of their individual preference for the Energy Star  
2 label?

3 MR. MARCHESE: Objection to form.

4 THE WITNESS: I still don't think I  
5 understand your question. My job was simple.  
6 I'm calculating the average discount, which is  
7 the same thing as the average price premium  
8 paid for the entire class.

9 BY MR. BELLAMY:

10 Q And do you think that anybody who  
11 purchased a Maytag Centennial washer paid the same  
12 price premium for the Energy Star logo?

13 A Paid the same price? I think there's a  
14 misunderstanding, or maybe I just had not stated it  
15 clearly enough. The survey is not designed to  
16 support individual assessments at the person level  
17 of how much that individual overpaid or what their  
18 price premium was associated with the Energy Star  
19 label.

20 I designed the study so that the data  
21 from all these respondents, almost 1100 of them, can  
22 be rolled up and an average calculated that could  
23 then be used by the economist for a damages  
24 calculation.

25 I have no opinion and I have no -- it

1 was not within my scope to design a tool that would  
2 support person-level measurements of the price  
3 premium paid.

4 Q So is there any connection between  
5 damages suffered by any class member and the price  
6 premium you've identified?

7 MR. MARCHESE: Objection to form,  
8 "damages."

9 THE WITNESS: Again, I'm not going to  
10 have a commentary today on ultimately how the  
11 damages are calculated or, for that matter, a  
12 legal opinion on liability.

13 BY MR. BELLAMY:

14 Q Does your opinion have any relevance to  
15 the amount of the price premium paid by any class  
16 member?

17 A Again, I have not been asked to even  
18 think about that. It's not within my scope. I  
19 would have to think about that as a research  
20 subject.

21 Surveys are tools for measuring  
22 population characteristics. Surveys, as I use them  
23 in my profession -- and there may be others who do  
24 things differently -- in my part of the profession,  
25 we use surveys to have sample-driven estimates of

1 population characteristics. And for me, the  
2 population characteristic being measured is that  
3 price premium paid for the entire class.

4 Q Are you familiar with the blue-ribbon  
5 panel convened by the National Oceanic and  
6 Atmospheric Administration to review the contingent  
7 valuation methodology?

8 A I am.

9 Q Are you okay if I just say "NOAA" going  
10 forward?

11 A "NOAA" is fine.

12 Q Do you generally agree with the  
13 findings of the NOAA panel?

14 MR. MARCHESE: Objection to form.

15 THE WITNESS: In my report, I do cite  
16 the NOAA report, and I state in my report that  
17 I generally find it useful.

18 I also clarified that I do take  
19 exception to some of the recommendations in  
20 the NOAA report.

21 BY MR. BELLAMY:

22 Q Did you consider how much money the  
23 individual named Plaintiffs in this case paid for  
24 their Maytag Centennial washers?

25 A I read -- I read it in the Complaint.

1 I did not consider it for purposes of my survey  
2 design because I already had the actual transaction  
3 data from the retailers to rely on.

4 Q Is it consistent with the information  
5 you recall reading that the named Plaintiffs paid in  
6 a range between approximately 300 and approximately  
7 \$550 for their Maytag Centennial washers?

8 A I don't have any recall of how much  
9 they actually paid.

10 Q And do you have any explanation for why  
11 the price of the Maytag Centennial washers could  
12 have fluctuated between 300 and \$550?

13 A Among the named Plaintiffs, you mean?

14 Q Sure.

15 A That's a small sample size. I believe  
16 you're talking about approximately 10 Plaintiffs  
17 that are named in the Complaint.

18 Q If the size of the sample size bothers  
19 you, do you have any explanation for how the price  
20 of the Maytag Centennial washers could have  
21 fluctuated between 300 and \$550 for anybody who  
22 purchased one of these washers during the class  
23 period?

24 A It's an interesting question. There  
25 are various supply side factors that may drive

1 prices up or down during this 2009-2012 period.

2 Obviously, retailers sometimes have sales; perhaps  
3 when the product is first introduced. I would have  
4 to speculate, and it's not something I researched.

5 Q Would it be relevant to your opinion in  
6 this case if the Maytag Centennial washers were the  
7 only Energy Star top-loading washers available in  
8 the market in 2009?

9 A As previously stated, I had a  
10 particular assignment to measure the value of the  
11 Energy Star label on these particular Maytag  
12 Centennial machines. I was not asked to measure the  
13 valuation that consumers might place on features of  
14 other machines. So it's not something that I would  
15 have looked at.

16 Q If a comparable non-Energy Star washer  
17 sold at this time, would you expect consumers to pay  
18 45 percent more for an Energy Star version?

19 MR. MARCHESE: Objection, lacks  
20 foundation.

21 THE WITNESS: Could you repeat, please?

22 BY MR. BELLAMY:

23 Q If a washing machine that was  
24 comparable to the Maytag Centennial washer that was  
25 not Energy Star sold during this time period --

1 meaning 2009 to 2010 -- for \$400, would you expect  
2 consumers to be willing to pay 45 percent more for  
3 an Energy Star version of the same washer?

4 MR. MARCHESE: Objection, lacks  
5 foundation.

6 THE WITNESS: I believe you mean  
7 45 percent more than the 400-dollar price  
8 point for the non-Energy Star washing machine?

9 BY MR. BELLAMY:

10 Q Correct.

11 MR. MARCHESE: Same objections.

12 THE WITNESS: That would require on my  
13 part outside my field of expertise.

14 BY MR. BELLAMY:

15 Q Do you have an opinion about whether  
16 the price premium you identified is constant across  
17 a range of top-loading washing machine prices?

18 A I missed the premise of your question.

19 Q Do you have an opinion about whether  
20 the price premium you identified would remain  
21 constant across a range of prices of comparable  
22 top-loading washers?

23 A Comparable top-loading washing  
24 machines? I did a study that was focused on these  
25 Maytag Centennial washing machines, so I have



1 confidence that my results project to those washing  
2 machines.

3 Q So does that mean you don't have an  
4 opinion about whether the price premium you  
5 identified would remain constant across the range of  
6 comparable top-loaders?

7 A I would need to look at these other  
8 machines that are part of your hypothetical and make  
9 a determination based on those machines.

10 Q What sort of information would you need  
11 to know about those machines?

12 A For instance, do they have the Energy  
13 Star label, and are they comparable in other ways?

14 Q And what other ways could be relevant  
15 to determining whether the price premium you  
16 identified would apply to them?

17 A I would look at also the capacity.  
18 That's clearly a feature that's a part of my survey.  
19 I haven't thought about this topic. I would need to  
20 think about it.

21 Furthermore, I would need to make a  
22 decision whether it's even within my scope of  
23 expertise to render an opinion on it.

24 Q So if I understood your testimony, is  
25 it possible that changing the capacity of a washing

1 machine could change the price premium associated  
2 with the Energy Star label, holding everything else  
3 constant?

4 A What do I know is I did a survey. The  
5 survey has a certain questionnaire behind it. It  
6 gave me reliable and valid results. I have  
7 confidence that it projects accurately to the Maytag  
8 Centennial washing machines that are the center of  
9 this litigation.

10 To the extent that it could be though  
11 results generalized to other washing machines, I  
12 don't have an opinion on that right now. It's  
13 something I would have to look at very hard.

14 MR. BELLAMY: I'm going to move to  
15 strike as nonresponsive.

16 BY MR. BELLAMY:

17 Q The question I'm trying to get an  
18 answer to is whether or not changing a feature other  
19 than Energy Star, but holding every other feature  
20 constant, could have an impact, positive or  
21 negative, on the price premium a consumer would pay  
22 for the Energy Star label.

23 A Again, I've done the survey. I would  
24 need to did other research to measure the possible  
25 change that could occur and the price premium paid

1 if I were to change the survey question wording or  
2 change the information that's provided to the  
3 respondents.

4 Q Yeah, I'm not asking you, obviously, to  
5 quantify what the change would be; just whether you  
6 think as a theoretical matter, as an expert in  
7 contingent valuation, if changing one of the  
8 variables other than Energy Star and holding  
9 everything else constant could impact the price  
10 premium associated with the Energy Star label.

11 MR. MARCHESE: Objection, lacks  
12 foundation.

13 THE WITNESS: I think that requires  
14 speculation. I would have to think about --  
15 it's something that I'm reluctant to speculate  
16 about without doing the analysis or thinking  
17 about it systematically.

18 BY MR. BELLAMY:

19 Q Do you think it's possible?

20 MR. MARCHESE: Objection, asked and  
21 answered.

22 THE WITNESS: It's possible the results  
23 could change if there's a significant change  
24 to the questionnaire.  
25

1 BY MR. BELLAMY:

2 Q So the price premium associated with  
3 the Energy Star label could conceivably change if  
4 you changed something else about the machine?

5 MR. MARCHESE: Objection, lacks  
6 foundation.

7 THE WITNESS: If I changed something  
8 else about the machine?

9 BY MR. BELLAMY:

10 Q You called out capacity, for example.  
11 You think it's possible that if you held everything  
12 else constant in your survey except you asked the  
13 question about 4.5 cubic foot washing machines,  
14 whether you would have gotten a different price  
15 premium associated with the Energy Star label?

16 MR. MARCHESE: Objection, lacks  
17 foundation.

18 THE WITNESS: I think that I would need  
19 to actually do the research study to see what  
20 the impact would be.

21 BY MR. BELLAMY:

22 Q As a theoretical matter, could you  
23 conduct a similar price premium analysis for any  
24 other feature beyond Energy Star, like capacity,  
25 color, brand?

1           A           Potentially, yes.

2           Q           And would you expect, if you added up  
3           the price premiums identified in those different  
4           surveys, you would get something equal to the  
5           average retail price of the machines?

6           A           I think the question you just asked  
7           would imply a different kind of survey research than  
8           contingent valuation.

9           Q           What kind of survey research does that  
10          imply?

11          A           I think you perhaps described a  
12          conjoint survey.

13          Q           How does a conjoint survey work?

14          A           A conjoint survey, there is an attempt  
15          to estimate the value that consumers place on each  
16          attribute. In my contingent valuation survey,  
17          there's only one attribute whose value that I'm  
18          measuring.

19          Q           And I understand that. I guess what  
20          I'm asking is if you were to conduct a separate  
21          contingent valuation survey for each major feature  
22          set of the washer, would you expect that the total  
23          price premium would equal the retail price of that  
24          washing machine?

25                   MR. MARCHESE: Objection, lacks

1 foundation.

2 THE WITNESS: So in your theoretical  
3 exercise, these are all independent samples,  
4 independent surveys. That was the premise I  
5 missed the first time you asked the question.

6 BY MR. BELLAMY:

7 Q Yes. Correct.

8 A I haven't thought about it. I'm not  
9 sure what to expect. I would need to actually do  
10 the research to identify what the impact would be.

11 Q If the total of the price premiums  
12 identified in the series of contingent valuation  
13 surveys I just hypothesized was greater than the  
14 average retail price, would that suggest a problem  
15 with the contingent valuation method?

16 MR. MARCHESE: Objection, lacks  
17 foundation.

18 THE WITNESS: That would require a  
19 valuation on my part on the execution of these  
20 separate contingent valuation surveys. It  
21 could be very well that there are issues with  
22 the questionnaire design and survey  
23 implementation that are responsible for the  
24 sum of the parts equaling more than what  
25 actual purchasers are paying for the product.

1 BY MR. BELLAMY:

2 Q But you would expect that if they were  
3 executed perfectly, that the sum of the parts should  
4 equal the purchase price?

5 A Again, I haven't thought about this  
6 before.

7 It would not be a cost-effective  
8 solution. I would just do a conjoint survey and  
9 measure and force the respondents to engage in a  
10 series of trade-off exercises so that you can  
11 measure the relative value that consumers place on  
12 these attributes.

13 Q When you aggregated the survey data as  
14 it pertained to the price premium, did you exclude  
15 any outliers?

16 A I did no data editing whatsoever.

17 Q What does the phrase "budget  
18 constraint" refer to?

19 A Budget constraint?

20 Q Or "income constraint"?

21 A You're probably referring to my quality  
22 control test in my report?

23 Q Not necessarily.

24 Are you familiar with the phrase  
25 "budget constraint"?

1           A           Aren't we all? A budget constraint  
2 meaning that someone has a limited pool of resources  
3 to use.

4           Q           And do you structure or phrase your  
5 survey questions in such a way as to remind survey  
6 respondents of their budget constraints?

7                       MR. MARCHESE: Objection to form.

8                       THE WITNESS: In this survey, I did not  
9 give -- that's part of the study, that I'm  
10 measuring the value that these purchasers  
11 place on the Energy Star label. Part of that  
12 is the individual respondents and what their  
13 own budget constraints are that they bring to  
14 the survey. So it's not something that I  
15 would have specified in the survey.

16 BY MR. BELLAMY:

17           Q           But these are purely hypothetical  
18 dollars they're spending, right?

19           A           These are hypothetical dollars.  
20 Clearly, they are not their dollars they're  
21 spending, but it's informed by their own personal  
22 situations with respect to, as we've talked about  
23 before, their preferences, attitudes, and opinions  
24 towards the Energy Star program and labels and also  
25 in terms of their personal financial situation.



1                   That's why I thought your question was  
2                   about my quality control section because I did  
3                   consider the role of household income and how it  
4                   relates to the price premium paid estimates in my  
5                   survey.

6                   Q           Do you have a general understanding of  
7                   whether Energy Star washing machines are more  
8                   expensive up front than non-Energy Star washing  
9                   machines?

10                  A           More expensive to purchase, or more  
11                  expensive to manufacture?

12                  Q           Sorry, to purchase.

13                               MR. MARCHESE: Objection to form.

14                               THE WITNESS: From reading some of the  
15                               documents in my list of materials, I  
16                               understand that there's a recognition and was  
17                               a recognition by Maytag that those are  
18                               relatively high-margin machines. To have an  
19                               Energy Star label is considered to be valuable  
20                               to purchasers; and therefore, a higher price  
21                               point could be commanded in the marketplace  
22                               with an Energy Star label.

23                               BY MR. BELLAMY:

24                   Q           Is it your understanding that Energy  
25                   Star-labeled washing machines tend to have a higher

1 purchase price than non-Energy Star washing  
2 machines?

3 A As a general finding, that's my belief.

4 Q And is your assumption that people who  
5 have lower annual income tend to pay more up front  
6 in exchange for long-term savings?

7 MR. MARCHESE: Objection, lacks  
8 foundation.

9 THE WITNESS: I don't have an opinion  
10 on that. It's not something that I've  
11 researched.

12 BY MR. BELLAMY:

13 Q But you drew a conclusion about your  
14 survey respondents who had higher incomes, did you  
15 not?

16 A I did.

17 Q And what was your conclusion?

18 A They had a -- they required less of a  
19 discount to be induced or persuaded to purchase the  
20 washing machine without the Energy Star label.

21 Q And how did you interpret that  
22 information?

23 A I interpreted that to mean they had  
24 fewer budgetary constraints; so therefore, they're  
25 not as attracted or susceptible to discounting.

1           Q           And the "discount" there refers to the  
2           cost of operating the machine; in other words, cost  
3           of energy?

4           A           "Discounting" refers to the survey I  
5           did. So my survey measures the discount that  
6           purchasers are required in order to be persuaded to  
7           buy a non-Energy Star-labeled washing machine.

8           Q           Did you take any steps to determine  
9           whether an individual respondent, income level, and  
10          the amount they identified they were willing to pay  
11          for the Energy Star label, whether they were  
12          consistent or not?

13                   MR. MARCHESE: Objection to form.

14                   THE WITNESS: Your question is about  
15          individual-level analysis?

16          BY MR. BELLAMY:

17          Q           Of your survey respondents, yes.

18          A           I've said a few times today I think  
19          it's -- it's not something I designed the study to  
20          do. My report speaks for itself. I did look at  
21          low-income versus high-income households that  
22          participated in my survey. So I looked at those  
23          price premium paid estimates at the group level. I  
24          did not look at them at the individual level.

25          Q           Why did you look at low income and high

1 income?

2 A As I stated in my report, it's a test  
3 that contingent valuation designers sometimes do  
4 with their data. They are inspecting the data to  
5 determine whether or not the price premium paid  
6 estimates are conforming to economic theory.

7 And that economic theory is the one  
8 that I articulated earlier; that the higher income  
9 households should be less susceptible to  
10 discounting.

11 Q Have you ever offered an expert opinion  
12 on damages?

13 A Could you possibly clarify what you  
14 mean by that?

15 Q Are you familiar with the concept of  
16 damages in private litigation?

17 A I am.

18 Q Have you ever offered an expert opinion  
19 on the amount of damages?

20 A Thanks for the clarification. The word  
21 "amount" helps clarify the question for me.

22 I have not provided an opinion in my  
23 previous testimony on what the amount of damages  
24 should be.

25 Q How many times have you offered an

1 expert opinion on any other issues related to  
2 damages other than the amount?

3 A When you say any other issues with  
4 respect to damages, I would include in that opinions  
5 I've made about the reliability of survey estimates  
6 that I provide the economists who in turn make the  
7 damage calculations.

8 I guess that's a question for you, sir,  
9 if I'm interpreting your question correctly.

10 Q I think I've already asked you this  
11 question, so I'm not going to ask you again.

12 I believe I asked you this outside of  
13 the context of litigation, and if I'm repeating  
14 myself, I apologize.

15 In the context of litigation, how many  
16 times have you used a contingent valuation survey to  
17 estimate the price premium for a private good or any  
18 attribute of a private good?

19 A In the context of litigation?

20 Q Yes.

21 A If I could have a moment to think.

22 A clarification question, if I could.

23 Is your question in reference to  
24 separate litigation efforts, separate litigations,  
25 or separate surveys?

1           Q       Well, let's start with separate  
2       litigations.

3           A       And contingent valuation only?

4           Q       Correct.

5           A       I could think of five today as I sit  
6       here.

7           Q       And how many of those five separate --  
8       how many kinds of products were involved in those  
9       five separate litigations?

10          A       They all involved different products.

11          Q       And what were the products?

12                    You mentioned one was a kitchen  
13       appliance.

14          A       That's right.

15          Q       What are the others?

16          A       I'm including this one as one of the  
17       five today. So four, not counting today.

18                    The other involving tobacco products,  
19       and then also another involving motor vehicles, and  
20       finally one involving cooking oil.

21          Q       And in each of those litigations, you  
22       conducted a contingent valuation survey to identify  
23       the price premium associated with some aspect of  
24       these five kinds of products?

25          A       That is correct. And if I could

1 clarify, the language can vary from project to  
2 project. "Discount percentage" and "price premium  
3 paid," as in my report, are synonymous. So in my  
4 answer to you today, I'm treating those also as  
5 synonymous.

6 Q And why would you calculate a discount  
7 percentage as opposed to a price premium?

8 A They're the same numbers. They're just  
9 different words.

10 Q I guess what I'm asking is: Is one  
11 intended to capture perhaps a negative value that a  
12 particular product attribute might have?

13 MR. MARCHESE: Objection to form.

14 THE WITNESS: I think they're all the  
15 same with respect to measuring the price  
16 premium paid or the discount percentage  
17 required in order to induce a purchaser to buy  
18 a product that's not currently on -- not  
19 currently on the market.

20 BY MR. BELLAMY:

21 Q Has a court ever struck your proffered  
22 expert opinion for any reason?

23 A No.

24 Q Has a court ever found any aspect of  
25 your expert opinion to be unreliable?

1           A           It's a broad question. I don't recall  
2           the word "unreliable" being used by a court or a  
3           judge.

4           Q           Has a court or a judge ever been  
5           critical of an opinion that you've offered in  
6           litigation?

7           A           Yes.

8           Q           Can you tell me about that instance or  
9           those instances?

10          A           The instance that is in the public  
11          record is the NCAA case commonly known as the  
12          Ed O'Bannon Matter.

13          Q           And what was the nature of your opinion  
14          in that case?

15          A           I provided an opinion for the  
16          defendants, NCAA, with respect to measuring the  
17          impact that paying college student athletes would  
18          have on the popularity of college men's basketball  
19          and college football in the United States.

20          Q           Did your opinion involve a contingent  
21          valuation survey?

22          A           No.

23          Q           Other than the NCAA case, are you aware  
24          of any other case in which a court or a judge was  
25          critical of your opinion, expert opinion?



1 A Yes, I am.

2 Q How many other instances?

3 A There is one other instance.

4 Q And what was that case?

5 A That was in the -- a case known as  
6 Massachusetts Tobacco.

7 Q And what was the nature of your opinion  
8 in that case?

9 A I did a survey approximately 14 years  
10 before the case went to trial, and that survey was  
11 conducted for a different litigation. And my  
12 opinions related to the value that purchasers of  
13 Marlboro Light cigarettes place on the brand  
14 descriptor "lights" and "lower tar and nicotine."

15 Q Was it a contingent valuation survey?

16 A It was.

17 Q And was the court's criticism limited  
18 to the fact that it was a 14-year-old survey?

19 A No.

20 Q What was the court's criticism?

21 A The court criticism was that I had done  
22 this survey for a different litigation matter, and  
23 for that first survey in the first litigation  
24 matter, a nationwide survey sample was appropriate.  
25 However, for this Massachusetts case that I'm

1       referencing now, the judge was not convinced that a  
2       nationwide survey was reliable for opinions related  
3       to Massachusetts purchasers of Marlboro Lights.

4               Q       Can you estimate how many contingent  
5       valuation surveys you have directed for any purpose?

6               A       There's the ones that I've mentioned in  
7       the last few minutes. I think I have listed five in  
8       that capacity.

9                       I've also served as my company's survey  
10       director for contingent valuation surveys done where  
11       I am not the lead investigator.

12                      I provide a survey director role in  
13       support of customers of mine who would essentially  
14       play the role that I play in the five surveys I've  
15       mentioned to you so far. With respect to how many  
16       of those there have been, I would estimate between  
17       five and ten, maybe a few more. It's been over a  
18       fairly long career I've been doing this kind of  
19       work. It could be as many as a dozen.

20               Q       And were these contingent valuation  
21       surveys related to environmental matters?

22               A       Yes, they were.

23               Q       All of them?

24               A       Yes.

25               Q       Were they for valuing public goods?

1 A Yes.

2 Q Were the customers the federal  
3 government?

4 A No.

5 Q Other governments, state governments,  
6 local governments?

7 A Not government.

8 Q Did you receive input from anybody else  
9 in this case on how to draft your survey questions?

10 A On how to draft the survey questions?

11 No.

12 Q Meaning the language you used in the  
13 survey questions.

14 A Not drafting the survey questions, no.

15 Q Did you receive help from anybody else  
16 on any other aspect of your contingent valuation  
17 survey?

18 A I sought advice at one point, yes.

19 Q And who did you seek advice from?

20 A From the damages expert on this case.

21 Q Is that Colin Weir?

22 A It is.

23 Q What was the nature of the advice you  
24 sought?

25 A I wanted to make sure he and I were

1 seeing the same things in the data related to the  
2 transactions, the real estate -- excuse me, the real  
3 market transactions for the prices paid by consumers  
4 for these Maytag Centennial washing machines.

5 Q And what were you seeing in the data  
6 that you wanted to verify with Mr. Weir?

7 A I wanted to make sure that my  
8 calculations were consistent with his calculations  
9 about the actual price that consumers had  
10 historically paid for these washing machines.

11 Q This is the average retail price?

12 A That's right.

13 Q And were your calculations consistent  
14 with Mr. Weir's?

15 A They were. It's important, since I am  
16 providing the inputs to Mr. Weir for the damages  
17 calculation, that he and I are on the same page with  
18 respect to the prices.

19 It's also very important for me because  
20 my goal was to anchor the survey in these real-world  
21 transaction data. I wanted to make sure I was using  
22 the right data for making my estimates.

23 Q Would you characterize the NOAA panel's  
24 recommendations as best practices to employ when  
25 conducting a contingent valuation survey?

1 MR. MARCHESE: Objection to form.

2 THE WITNESS: I think I covered this in  
3 my report, and I used the words that I believe  
4 are most appropriate in this circumstance.  
5 The report was written 28, 30 years ago,  
6 approximately. At the time, it was best  
7 practices. In my opinion, it could be  
8 updated. And if updated, it could potentially  
9 be a best practices document. But right now,  
10 it cannot serve that role, in my opinion.

11 BY MR. BELLAMY:

12 Q Did the fact that the Energy Star label  
13 conveys a message of energy efficiency play any role  
14 in your calculation of a premium price [sic] here?

15 A I calculated the price premium paid on  
16 the basis of the survey data, just based on the  
17 survey data that I have. I did not use any other  
18 information in making those calculations.

19 Q Could you have created your survey that  
20 compared the hypothetical Washers A and B by  
21 comparing their annual energy savings against each  
22 other as opposed to just the Energy Star label?

23 MR. MARCHESE: Objection, lacks  
24 foundation.

25 THE WITNESS: I think that would be

1           problematic for measuring the price premium  
2           paid, which was my responsibility and  
3           assignment in this case. My goal was to  
4           isolate the impact of the Energy Star label.  
5           That's why I designed the survey the way I  
6           did.

7       BY MR. BELLAMY:

8           Q           We talked at the beginning of the day  
9           about the information that's contained on the energy  
10          guide label, and you recall the energy guide label  
11          had a range of annual operating costs for similar  
12          models?

13          A           I do.

14          Q           And it identified where the washer in  
15          question, whatever washer the label would be affixed  
16          to, fell on that range?

17          A           Yes.

18          Q           Could you have compared a hypothetical  
19          Washer A and B that identified where the two  
20          machines fell on different ranges of energy  
21          efficiency?

22                       MR. MARCHESE: Objection, lacks  
23                       foundation.

24                       THE WITNESS: For a different set of  
25                       research objectives, if I were asked to test

1 the effectiveness of different energy guides,  
2 then I would design a study like that. But I  
3 was asked to actually study the Energy Star  
4 labels and the value that purchasers placed on  
5 those labels.

6 BY MR. BELLAMY:

7 Q So is it at least possible that you  
8 could design a contingent valuation survey to  
9 measure the price premium associated on relative  
10 energy efficiency?

11 MR. MARCHESE: Objection, lacks  
12 foundation.

13 THE WITNESS: I would have to think  
14 about it. In theory, you could do a  
15 contingent valuation survey if the goal were  
16 to test the relative effectiveness or value  
17 that purchasers place on different types of  
18 energy guide statements or different formats  
19 of energy guide statements. It's possible to  
20 do that.

21 That was not my mission. That's not  
22 what I was asked to do.

23 BY MR. BELLAMY:

24 Q And beyond just the exact statements on  
25 the energy guide label, could you compare the price

1 premium associated with otherwise identical washers  
2 where one is relatively more energy efficient than  
3 the other?

4 A I think that it's possible to design a  
5 contingent valuation survey to measure the value  
6 people put on all kinds of nonmarket goods.

7 Q Have you ever designed -- regardless of  
8 whether you implemented -- designed a contingent  
9 valuation survey to measure the price premium  
10 associated with two products that had different  
11 energy efficiency?

12 A Galen, can we take a break?

13 VIDEO OPERATOR: Going off the record  
14 at approximately 4:41 p.m.

15 (Brief recess.)

16 VIDEO OPERATOR: This is the beginning  
17 of File 8. We're going back on the record now  
18 at approximately 4:56 p.m.

19 (The Value of the Energy Star Market  
20 document, WZ0000204 - WZ0000207, was marked  
21 Dennis-6 for identification.)

22 BY MR. BELLAMY:

23 Q Dr. Dennis, we're handing you a  
24 document that's been marked Dennis-6 for your  
25 deposition.



1                   Take a moment and tell me if you  
2                   recognize it.

3           A           Yes, I believe this is in my list of  
4           considered materials.

5           Q           There's a reference to Harris  
6           Interactive in the first paragraph.

7                   Are you familiar with Harris  
8           Interactive?

9           A           It's a company that used to exist.  
10          They're owned by Nelson now.

11          Q           And what is Harris Interactive's  
12          reputation among survey experts?

13          A           I don't think of them --

14                   MR. MARCHESE: Objection, lacks  
15          foundation. Objection to the form.

16                   THE WITNESS: Amongst survey experts  
17          like myself?

18          BY MR. BELLAMY:

19          Q           Correct.

20          A           Well, in its time, back in the 1990Ss,  
21          early 2000s, it was considered one of the leaders in  
22          online survey research. I have a biased point of  
23          view because I was competing against them directly  
24          with the business that I started.

25          Q           When they were in existence, did you

1     rely on surveys prepared by Harris Interactive for  
2     any reason?

3             A           I cannot think of an instance where I  
4     would have relied on a Harris Interactive survey.

5             Q           It says in the first paragraph that  
6     "Whirlpool commissioned Harris Interactive to survey  
7     consumers nationwide on their compliance habits and  
8     practices."

9                         Do you see that?

10            A           I do.

11            Q           Do you know anything about how that  
12     survey was conducted?

13            A           I could speculate. I know that Harris  
14     business, but I don't think that it would be  
15     responsible for me to speculate on how the poll was  
16     conducted.

17            Q           So you don't actually know how the  
18     Harris Interactive survey referenced here was  
19     conducted?

20            A           I know how Harris operated as a  
21     business back then, but they're a large firm. It's  
22     possible they could have done something differently  
23     than what they normally did.

24            Q           Do you know anything about what survey  
25     questions were asked?

1           A           I see they have a question here. It's  
2   not a question, but from the results, I could make  
3   some inferences about survey questions asked. But I  
4   have not seen the questionnaire they actually used.

5           Q           It states towards the bottom of the  
6   first paragraph that "72 percent of respondents  
7   actively look for the Energy Star label."

8                       Do you see that?

9           A           I do.

10          Q           Is that conclusion consistent with  
11   Paragraph 11A in your contingent valuation survey  
12   report?

13          A           It's measuring different things, so --

14          Q           I understand.

15          A           It's hard to make a statement whether  
16   they're consistent or inconsistent. They're  
17   measuring different properties in the population.

18          Q           So you don't have an opinion about  
19   whether that 72 percent figure is consistent with  
20   your conclusion in Paragraph 11A?

21          A           I'll put it this way: The  
22   directionality of the findings are consistent  
23   between the Harris Interactive poll and my survey.

24                       When I say "directionality," they both  
25   show that the public has positive affect toward the

1 Energy Star brand, but they are measuring different  
2 things. So it's difficult to have a more precise  
3 opinion than that.

4 Q Do you know whether the Harris  
5 Interactive survey described in Exhibit 6 was  
6 specific to top-loading washing machines?

7 A All I have is this exhibit in front of  
8 me. So I don't see anything in this document,  
9 Exhibit 6, that indicates that the survey regarded  
10 top-loading machines exclusively.

11 (The Value of the Energy Star Market  
12 document, Wdz0000204 - Wdz0000207, was marked  
13 Dennis-7 for identification.

14 BY MR. BELLAMY:

15 Q You've been handed what's been marked  
16 as Exhibit 7 to your deposition.

17 Take a moment to look at that document  
18 and tell me if you recognize it.

19 A Yes, I do.

20 Q Is this one of the documents you  
21 identified as having relied on in your report?

22 A That is true.

23 Q Do you know when this document was  
24 created?

25 A I think I had the same question when I

1 first looked at this document.

2 Q Do you recall if you reached any  
3 conclusion about that?

4 A I would have -- whatever conclusion I  
5 reached, I put it in my list of considered  
6 materials.

7 Q Look at the last page of this document.  
8 There's a slide that has a bullet point that says  
9 "Goal: 60 percent awareness by 2005."

10 Do you see that?

11 A I do.

12 Q Based on that, would you assume that  
13 this document was created in 2005 or earlier?

14 MR. MARCHESE: Objection.

15 THE WITNESS: It's difficult to know.

16 I mean, other parts of the document provide  
17 conflicting evidence. If you look at the back  
18 of the first page, there's a 2006 reference  
19 there for the volume of units sold by  
20 different kinds of appliances. It's difficult  
21 to say when the first page was produced versus  
22 the attachments.

23 BY MR. BELLAMY:

24 Q The first sentence on the first page  
25 refers to a "Whirlpool government relations analysis

1 of Energy Star-qualified sales."

2 Do you see that?

3 A I do.

4 Q Do you know what the "government  
5 relations analysis" refers to?

6 A That -- Mr. Sinclair, I believe, was  
7 responsible for government relations or worked in  
8 the government relations department.

9 Q And who is Mr. Sinclair?

10 A From Exhibit 6 that you handed me  
11 earlier, the primary author of that document.

12 Q So are you familiar with the Whirlpool  
13 government relations analysis of the Energy  
14 Star-qualified products referenced in Exhibit 7?

15 A As I sit here now, I'm not sure which  
16 document that's referring to.

17 Q Do you have reason to believe you've  
18 ever seen that document?

19 A I can't remember right now if I've seen  
20 it or not. I would have to look at my list of  
21 considered materials for my reliance list.

22 Q Do you know anything about how the  
23 percentages that are identified in the bullet points  
24 on the first page of Exhibit 7 were arrived at?

25 A You're referring to the middle of the

1 page there where there's four bullet points?

2 Q Yes.

3 A The Energy Star survey of consumers, I  
4 don't want to speculate. I would do my research on  
5 that. I think, as memory best serves, it was that  
6 consortium study that it's relying on. But I would  
7 need to get my documents together and look at the  
8 source documents that say definitively what the data  
9 source is for the four bullet points in the middle  
10 of page 1 there.

11 Q Do you recall looking at any data  
12 underlying an Energy Star survey of consumers that's  
13 referenced in the first page of Exhibit 7?

14 A The underlying data?

15 Q Correct.

16 A What do you mean by "underlying data"?

17 Q Well, for example, the survey  
18 questions.

19 A No. I don't remember the survey  
20 questions.

21 Q Do you know anything about the  
22 methodology employed in the Energy Star survey?

23 A Again, if I had the materials from my  
24 reliance list in front of me, I could most likely  
25 piece together where these findings came from, from

1 the middle of page 1.

2 Q Well, I'm asking you as you sit here  
3 today, do you remember seeing any actual survey  
4 questions that underlied an Energy Star survey that  
5 you didn't conduct?

6 A I think I answered that question. I  
7 don't have recall at this moment of those survey  
8 questions. That's why I'm continuing to suggest  
9 that if I had the documents available, I could look  
10 at them and piece together where these data findings  
11 come from, which would tell me which survey we're  
12 talking about, which would allow me to figure out  
13 which questionnaire it's referencing.

14 Q That first bullet point under "Energy  
15 Star survey of consumers," it says "80 percent of  
16 consumers surveyed stated they're familiar with the  
17 Energy Star mark."

18 Do you see that?

19 A I do.

20 Q Does it follow, then, that 20 percent  
21 of the consumer surveys were unfamiliar with the  
22 Energy Star mark?

23 A This is one of these things where you  
24 need to look at the survey question. For instance,  
25 there could have been a middle option for neither



1 familiar nor unfamiliar. It may not be unfamiliar,  
2 the 20 percent. It depends on how the survey  
3 question is worded.

4 Q And as you sit here today, you don't  
5 remember whether you saw the survey questions?

6 A That's correct.

7 Q The third bullet point down, it says  
8 "75 percent of consumers surveyed stated they would  
9 purchase an Energy Star clothes washer over a  
10 non-qualified model."

11 Do see that?

12 A I do.

13 Q Is that consistent with your conclusion  
14 in Paragraph 11A of your report?

15 A It's a directionality. It's  
16 consistent. I'd have to see, of course, how the  
17 survey was constructed, who the respondents are.

18 The information I have is according to  
19 an Energy Star survey of consumers.

20 Consumers of what? There's not enough  
21 information here for me to make an evaluation.

22 (The Value of the Energy Star Market  
23 document, WDZ0000204 - WDZ0000207, was marked  
24 Dennis-8 for identification.)

25 BY MR. BELLAMY:

1           Q       You've been handed what's been marked  
2       as Exhibit 8 for your deposition.

3                   Can you take a moment to review that  
4       and let me know if you recognize it?

5           A       Yes, I remember this report.

6           Q       Is this one of the documents you relied  
7       on?

8           A       I did. It's in my list of considered  
9       materials.

10          Q       Can you turn to page 5 of this  
11       document?

12          A       Yes. I'm there.

13          Q       You've seen this graphic before?

14          A       I have.

15          Q       Do you know who gathered the data that  
16       underlied this graphic?

17          A       I see a firm down there called  
18       Fairfield Research as the source.

19          Q       Are you familiar with Fairfield  
20       Research?

21          A       No, I'm not.

22          Q       Do you know anything about how these  
23       data were collected or analyzed that underlie this  
24       graphic?

25          A       I don't know with certainty.

1                   (The Value of the Energy Star Market  
2           document was marked Dennis-9 for  
3           identification.)

4       BY MR. BELLAMY:

5           Q       You've been handed a document that's  
6       been marked as Exhibit 9 for this deposition.

7                   Please take a look at this document and  
8       tell me if you recognize it.

9           A       Yes, I recognize this document.

10          Q       Do you know who authored this document?

11          A       I would -- as I sit here today, I  
12       cannot tell you who authored it. It does not  
13       mention it on the document itself that I can see.

14          Q       Do you know the purpose of this  
15       document; who the audience was?

16          A       Again, all I have is the document in  
17       front of me. I've seen this document before, but I  
18       did not have other information available to me to  
19       tell me who wrote it.

20          Q       Is there any indication in the document  
21       of when it was created?

22          A       I'm looking at the sources. I see a  
23       2003 citation -- and there's two citations for 2003,  
24       and everything else is older than 2003.

25          Q       Did you draw any conclusions from that?

1           A           I would, based on the data that I see  
2           here, it would be in 2003 or more recently.

3           Q           And you mentioned sources. Could you  
4           quickly review those sources and tell me if you  
5           recall having consulted any of those sources before?

6           A           I recall, I'm looking at the bullet  
7           point near the bottom there for the Cadmus Group  
8           study. I remember looking -- that's the third  
9           bullet point from the bottom.

10          Q           I see it.

11                   Did you look at Cadmus Group study in  
12          connection with your work for this case?

13          A           It would be in my list of considered  
14          materials. I would need to reference that to  
15          verify.

16          Q           But do you recall looking at the Cadmus  
17          Group study independent of this litigation?

18          A           Independent of this litigation? I  
19          think it would be connected to this litigation.

20          Q           But if you relied on the Cadmus Group  
21          study, it would be identified in your list of  
22          materials?

23          A           It would be.

24                   The Gallup Organization study, I had  
25          available to me a document that had a summary of the

1 Gallup Organization findings.

2 Q I'm sorry, where is that referred to?

3 A It's in the middle of the sources.

4 Q I see. It's dated 2000?

5 A Correct.

6 Q Did you rely on that organization?

7 A I cited it in my report.

8 MR. BELLAMY: Thank you, Dr. Dennis.

9 That's all the questions I have for you.

10 MR. MARCHESE: I don't have any  
11 questions at this time. I just want to  
12 reserve the witness's right to review and sign  
13 the transcript.

14 VIDEO OPERATOR: We're now going off  
15 the record at approximately 5:16 p.m.

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C E R T I F I C A T I O N

I, LISA FORLANO, a Certified Realtime Reporter, Certified Court Reporter and Notary Public, do hereby certify that I reported the deposition in the above-captioned matter, that the said witness was duly sworn by me; that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me in the above-captioned matter.

I further certify that I am not an attorney or counsel for any of the parties, not a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

A handwritten signature in black ink that reads "Lisa Forlano". The signature is written in a cursive, flowing style.

LISA FORLANO, CRR, CCR #XI01143

Dated: March 14, 2016

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ASSIGNMENT NO. CS2236907  
CASE NAME: Dzielak, Et Al. v. Whirlpool Corporation  
DATE OF DEPOSITION: 3/8/2016  
WITNESS' NAME: J. Michael Dennis

PAGE/LINE(S) /	CHANGE	REASON
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\_\_\_\_\_  
J. Michael Dennis  
(Notary not required in California)  
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BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

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March 14, 2016  
To: Joseph Marchese, Esq.  
Case Name: Dzielak, Et Al. v. Whirlpool Corporation  
Veritext Reference Number: 2236907  
Witness: J. Michael Dennis Deposition Date: 3/8/2016

Dear Sir:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature at the bottom of the sheet notarized except in California where they are signing under penalty of perjury and forward the errata sheet back to us at the address shown above.

If the jurat is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

Encl.

Cc: Galen D. Bellamy, Esq.



[&amp; - 3,377]

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[wide - zero]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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